

**TITLE 6. GOVERNOR'S OFFICE
DIVISION OF GOVERNMENTAL COORDINATION**

**CHAPTER 50. ALASKA [PROCESS FOR CONSISTENCY DETERMINATION,
REVIEW, AND PETITION FOR] COASTAL MANAGEMENT PROGRAM (ACMP)
IMPLEMENTATION**

Article

1. Program Administration (6 AAC 50.005 – 6 AAC 50.055) [CONSISTENCY DETERMINATION AND REVIEW (6 AAC 50.010 – 6 AAC 50.190)]
2. State Consistency Review Process (6 AAC 50.200 – 6 AAC 50.280) [PETITIONS TO THE ALASKA COASTAL POLICY COUNCIL (6 AAC 50.310 – 6 AAC 50.380)]
3. Consistency Review Process for Federal Activities (6 AAC 50.305 – 6 AAC 50.395)
4. Consistency Review Process for Federally Regulated Activities (6 AAC 50.405 – 6 AAC 50.495)
5. Public Participation (6 AAC 50.500 – 6 AAC 50.520)
6. Elevation and Petition (6 AAC 50.600 – 6 AAC 50.630)
7. General and Nationwide Permits, Categorically Consistent Determinations, General Consistency Determinations, and General Consistency Concurrences (6 AAC 50.700 – 6 AAC 50.790)
8. Project Modifications and Renewals of Authorizations (6 AAC 50.800 – 6 AAC 50.830)
9. General Provisions (6 AAC 50.910 [6 AAC 50.925] – 6 AAC 50.990)

**ARTICLE 1. PROGRAM ADMINISTRATION [CONSISTENCY DETERMINATION
AND REVIEW]**

005. Applicability of the ACMP Consistency Review Process
010. Repealed [PURPOSE OF REGULATIONS]
015. (Expired)
020. Repealed [FEDERAL CONSISTENCY DETERMINATIONS]
025. Scope of Project Subject to Consistency Review
030. Repealed [STATE PERMIT CONSISTENCY DETERMINATION]
035. Division of Governmental Coordination (DGC) Responsibility
040. Repealed [PREAPPLICATION ASSISTANCE]
045. Resource Agency Authority
050. Repealed [EXPEDITED REVIEW BY CATEGORICAL APPROVAL]
055. Coastal Resource District Responsibility
060. Repealed [SCOPE OF PROJECT TO BE REVIEWED]
070. Repealed [CONSISTENCY REVIEW PROCESS]
075. Repealed [TIMING AND PROCESS OF ELEVATION]
076. Repealed [TIMING OF PETITION REVIEW]
080. Repealed [CONFIDENTIAL INFORMATION AND FEES]
090. Repealed [EMERGENCY EXPEDITED REVIEW]
100. Repealed [PUBLIC PARTICIPATION]
110. Repealed [REVIEW PERIOD DEADLINES, EXTENSIONS, SUSPENSIONS, AND MODIFICATIONS]
120. Repealed [CONCLUSIVE CONSISTENCY DETERMINATIONS]
130. Repealed [ISSUANCE OF PROJECT PERMITS]
190. (Repealed)

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.005. APPLICABILITY OF THE ACMP CONSISTENCY REVIEW PROCESS. (a) A project is subject to the consistency review process described in this chapter when

- (1) any activity that is part of the project
 - (A) requires a state agency authorization identified under 6 AAC 50.750;
 - (B) is a federal activity;
 - (C) requires a federal authorization identified under 6 AAC 50.405; or
 - (D) is described in an Outer Continental Shelf (OCS) exploration or development and production plan; and
- (2) the activity is
 - (A) located within the coastal zone; or
 - (B) subject to a consistency determination under 15 C.F.R. 930.

(b) Only one consistency review process applies to a project. The consistency review process described in

(1) Article 2 (6 AAC 50.200-.280) applies when a project requires only an authorization from one or more state agencies;

(2) Article 3 (6 AAC 50.305-.395) applies when a project is a federal activity that may also require a state agency authorization; and

(3) Article 4 (6 AAC 50.405-.495) applies when a project requires a federal authorization or is an OCS exploration or development and production plan that may also require a state agency authorization.

(c) The consistency response under 6 AAC 50.305-.395 or 6 AAC 50.405-.495 is the only consistency determination required for a project that is a federal activity or federally regulated activity that may also require a state agency authorization. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.010 is repealed:

6 AAC 50.010. PURPOSE OF REGULATIONS. Repealed. (Eff. 3/11/84, Register 89; repealed ____/____/200__, Register ____)

6 AAC 50.015. TRANSITIONAL PROVISIONS. (In effect 5/1/90-8/9/90, be em adop., Register 114)

6 AAC 50.020 is repealed:

6 AAC 50.020. FEDERAL CONSISTENCY DETERMINATIONS. Repealed. (Eff. 3/11/84, Register 89; repealed ____/____/200__, Register ____)

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.025. SCOPE OF PROJECT SUBJECT TO CONSISTENCY REVIEW. (a) The coordinating agency, in consultation with the applicant, any resource agency that requires an authorization, and any potentially affected coastal resource district, shall determine the scope of the project subject to a consistency review.

(b) Except as provided under AS 46.40.094 and 6 AAC 50.700, the scope of the project subject to a consistency review must, at a minimum, include

- (1) each activity that requires a state agency authorization identified under 6 AAC 50.750;
- (2) each activity that requires a federal agency authorization identified under 6 AAC 50.405; and
- (3) a federal activity and its associated facilities. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.020

6 AAC 50.030 is repealed:

6 AAC 50.030. STATE PERMIT CONSISTENCY DETERMINATIONS. Repealed. (Eff. 3/11/84, Register 89; em am 5/1/90-8/9/90, Register 114; repealed ____/____/200__, Register ____)

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.035. DIVISION OF GOVERNMENTAL COORDINATION (DGC) RESPONSIBILITY. (a) The DGC is the designated state agency under section 306(d)(6) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1455 (CZMA), as amended. As the designated state agency, DGC is responsible for

(1) commenting on and concurring with or objecting to federal consistency determinations and negative determinations for federal activities and consistency certifications for federal authorizations and Outer Continental Shelf (OCS) plans; and

(2) requesting and coordinating review and comment from

(A) resource agencies;

(B) coastal resource districts; and

(C) the public.

(b) DGC is the only state agency designated to

(1) comment on, concur with, or object to a federal consistency determination or negative determination for a federal activity;

(2) comment on, concur with, or object to an applicant's consistency certification for a federal authorization or OCS plan;

(3) coordinate the consistency review and issue a consistency determination for a project that requires an authorization from two or more resource agencies

(4) coordinate the consistency review and issue a consistency determination for a project that requires an authorization from a state agency other than a resource agency; or

(5) determine whether a district is an affected coastal resource district.

(c) In executing its responsibilities under this section, DGC is considered the coordinating agency for purposes of this chapter.

(d) DGC shall develop, maintain, and update a coastal project questionnaire (CPQ). The CPQ shall solicit information regarding the project's description, site information, consistency with the enforceable policies of the ACMP, and necessary authorizations.

(e) DGC will, at the request of a resource agency coordinating a single agency review under 6 AAC 50.045(c), act as a facilitator to attempt to resolve conflicts among the resource agencies, an affected coastal resource district or an applicant regarding a single agency consistency determination. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.040
AS 44.19.160 AS 44.19.162

6 AAC 50.040 is repealed:

6 AAC 50.040. PREAPPLICATION ASSISTANCE. Repealed. (Eff. 3/11/84, Register 89; repealed ____/____/200__, Register ____)

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.045. STATE AGENCY AUTHORITY. (a) Nothing in this chapter displaces or diminishes the authority of any state agency with respect to coastal uses and resources under that agency's own statutory authorities.

(b) A state agency activity that may have a reasonably foreseeable direct or indirect effect on a coastal use or resource shall be conducted in a manner consistent with the enforceable policies of the ACMP.

(c) A resource agency shall coordinate the consistency review and issue the consistency determination for a project that requires an authorization from only that agency and no federal authorization.

(d) In executing its responsibilities under (c) of this section, the resource agency is considered the coordinating agency for purposes of this chapter. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040

6 AAC 50 is repealed:

6 AAC 50.050. EXPEDITED REVIEW BY CATEGORICAL APPROVAL AND GENERAL CONCURRENCE DETERMINATIONS. Repealed. (Eff. 3/11/84, Register 89; repealed ____/____/200__, Register ____)

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.055. COASTAL RESOURCE DISTRICT RESPONSIBILITY. (a) A coastal resource district may participate in a consistency review under this chapter by submitting comments to the coordinating agency regarding consistency of the proposed project with the enforceable policies of the ACMP.

(b) A coastal resource district may participate in a consistency review as an affected coastal resource district if the

(1) project is proposed to be located within the coastal resource district boundaries; or

(2) the district demonstrates that the project located outside their coastal resource district boundaries may have a direct and significant impact on a coastal use or resource within the coastal zone of their coastal resource district boundaries.

(c) A coastal resource district whose program is incorporated into the ACMP is considered to have expertise in the interpretation of its program. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.090

6 AAC 50.060 is repealed:

6 AAC 50.060. SCOPE OF PROJECT TO BE REVIEWED. Repealed. (Eff. 3/11/84, Register 89; em am 5/1/90-8/9/90, Register 114; repealed ____/____/200__, Register ____)

6 AAC 50.070 is repealed:

6 AAC 50.070. CONSISTENCY REVIEW PROCESS. Repealed. (Eff. 3/11/84, Register 89; em am 5/1/90-8/29/90, Register 114; am 5/20/93, Register 126; am 7/1/99, Register 150; repealed ____/____/200__, Register ____)

6 AAC 50.075 is repealed:

6 AAC 50.075. TIMING AND PROCESS OF ELEVATION. Repealed. (Eff. 7/1/99, Register 150; repealed ____/____/200__, Register ____)

6 AAC 50.076 is repealed:

6 AAC 50.076. TIMING OF PETITION REVIEW. Repealed. (Eff. 7/1/99, Register 150; repealed __/__/200__, Register __)

6 AAC 50.080 is repealed:

6 AAC 50.080. CONFIDENTIAL INFORMATION AND FEES. Repealed. (Eff. 3/11/84, Register 89; repealed __/__/200__, Register __)

6 AAC 50.090 is repealed:

6 AAC 50.090. EMERGENCY EXPEDITED REVIEW. Repealed. (Eff. 3/11/84, Register 89; repealed __/__/200__, Register __)

6 AAC 50.100 is repealed:

6 AAC 50.100. PUBLIC PARTICIPATION. Repealed. (Eff. 3/11/84, Register 89; am 7/1/99, Register 150; repealed __/__/200__, Register __)

6 AAC 50.110 is repealed:

6 AAC 50.110. REVIEW PERIOD DEADLINES, EXTENSIONS, SUSPENSIONS, AND MODIFICATIONS. Repealed. (Eff. 3/11/84, Register 89; am 5/20/93, Register 126; am 7/1/99, Register 150; repealed __/__/200__, Register __)

6 AAC 50.120 is repealed:

6 AAC 50.120. CONCLUSIVE CONSISTENCY DETERMINATION. Repealed. (Eff. 3/11/84, Register 89; em am 5/1/90-8/9/90, Register 114; am 7/1/99, Register 150; repealed __/__/200__, Register __)

6 AAC 50.130 is repealed:

6 AAC 50.130. ISSUANCE OF PROJECT PERMITS. Repealed. (Eff. 3/11/84, Register 89; repealed __/__/200__, Register __)

6 AAC 50.190. DEFINITIONS. Repealed. (Eff. 3/11/84, Register 89; em am 5/1/90-8/9/90, Register 114; am 5/20/93, Register 126; repealed 7/1/99, Register 150)

ARTICLE 2. STATE CONSISTENCY REVIEW PROCESS [PETITIONS TO THE ALASKA COASTAL POLICY COUNCIL]

200. Applicability

210. Coastal Project Questionnaire

216. Pre-review Assistance

220. Applicant Consistency Review Packet

225. Determination of Completeness and Notice to Applicant

230. Determination of the Scope of the Project Subject to Consistency Review

235. Timing of a Consistency Review

240. Initiation of a Consistency Review

245. Request for Additional Information

250. Comment Deadlines

255. Review Participant Comment

260. Proposed Consistency Determination

265. Final Consistency Determination

270. Time for Issuance of a Final Consistency Determination

275. Resource Agency Authorization

280. Consistency Review Schedule Modification and Termination

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.200. APPLICABILITY. (a) An activity that requires a state agency authorization identified under 6 AAC 50.750 and that meets the requirements of 6 AAC 50.005(a)(2) must be conducted in a manner consistent with the enforceable policies of the ACMP.

(b) The consistency review process described in this article applies to a project under (a) when the project requires one or more state agency authorizations identified under 6 AAC 50.750 and the project is not subject to the consistency review process under 6 AAC 50.305-.395 or 6 AAC 50.405-.495. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 46.40.020 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.210. COASTAL PROJECT QUESTIONNAIRE. (a) Except as provided for in (c), DGC on request, or a resource agency that receives an application for an activity that may require an authorization identified under 6 AAC 50.750, shall provide the applicant a CPQ. The applicant shall return the completed CPQ to DGC or the resource agency that provided the CPQ. Based on the information provided by the applicant in response to the CPQ, DGC or the resource agency shall, to the extent feasible, preliminarily identify the authorizations that are required for the project.

(b) If, during its review of the CPQ, a resource agency finds that a federal authorization or authorizations from more than one resource agency may be required, the agency shall

(1) send the CPQ to DGC; and

(2) refer the applicant to DGC.

(c) A CPQ is not required

(1) for placer mining activity that is authorized by an application known as an "Annual Placer Mining Application;" the application shall be submitted to the Department of Natural Resources (DNR);

(2) for an aquatic farm project proposed on state-owned tidelands and applied for through an aquatic farm application packet; the application shall be submitted to the DNR; and

(3) when a categorically consistent determination developed under 6 AAC 50.710 or a general consistency determination developed under 6 AAC 50.730 specifically states a CPQ is not needed for the covered activity. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.160

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.216. PRE-REVIEW ASSISTANCE. (a) Prior to the start of a consistency review, a coordinating agency shall, on request, assist an applicant by explaining the consistency review requirements.

(b) At the time an applicant requests pre-review assistance, the applicant shall, at a minimum, provide a brief description of the proposed project. To the extent feasible, the applicant shall provide the coordinating agency with a

(1) completed CPQ;

(2) map identifying the location of the project, adjacent facilities, and any designated environmentally sensitive areas; and

(3) description of any man-made structures or natural features that are proximally located to the project.

(c) The applicant may request that the coordinating agency provide information including

(1) an explanation of the CPQ and the consistency review process;

(2) identification of coastal resource districts that may have an interest in the project;

(3) to the extent feasible, identification of applicable enforceable policies;

(4) identification of the state and federal authorizations likely required for the project and persons to contact in other state or federal agencies;

(5) to the extent feasible, the identification of the activities that may require a state agency authorization and that are identified under 6 AAC 50.750 or a federal authorization listed under 6 AAC 50.405 and that are subject to review;

(6) to the extent feasible, an estimated time schedule for the consistency and resource agency authorization reviews; and

(7) to the extent feasible, the identification of mandatory information that may be required to determine consistency with the enforceable policies of the ACMP, compliance with state agency authorizations, and potential mitigation requirements.

(d) When an applicant requests pre-review assistance,

(1) the coordinating agency may consult with resource agencies as necessary to assist the coordinating agency in developing the information described in subsection (c)(3)-(7) of this section; and

(2) a resource agency may identify issues related to the authorization and potential mitigation requirements and, to the extent feasible, discuss with the applicant how the activity may comply with its statutory and regulatory authorities.

(e) The coordinating agency will attempt to inform a coastal resource district of a proposed project that may affect a coastal use or resource within the district. When a formal pre-review assistance meeting is scheduled, the coordinating agency shall invite a coastal program representative from any potentially affected coastal resource district to the meeting. (Eff.

____/____/200__, Register ____)

Authority: AS 44.19.145

AS 44.19.160

AS 46.40.100

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.220. CONSISTENCY REVIEW PACKET. (a) The applicant shall submit a consistency review packet to the coordinating agency that includes

(1) a completed CPQ that includes

(A) a complete and detailed description of the proposed project with sufficient specificity for the coordinating agency to determine the purpose of the proposed project and the potential impact to any coastal use or resource;

(B) a certification that the proposed project complies with and will be conducted in a manner consistent with the ACMP; the certification shall state, "The proposed project complies with the applicable enforceable policies of the ACMP and will be conducted in a manner consistent with the program;"

(C) data and information sufficient to support the applicant's consistency certification;

(D) maps, diagrams, technical data and other relevant material that precisely describe the project site location, topographical information, township, range, section, and meridian, and other site specific information; and

(E) a signature and the date signed; and

(2) completed copies of all resource agency authorization applications required for the project, except as provided in (d) of this section.

(b) When a project requires an authorization from two or more resource agencies, the applicant shall submit the consistency review packet to DGC and any authorization application to the appropriate authorizing agency. When a project requires one or more authorizations from only a single resource agency, the applicant shall submit the consistency review packet to the resource agency.

(c) The coordinating agency, on its own initiative, or at the request of a coastal resource district or a resource agency, may require that the applicant provide additional copies of the consistency review packet, maps or other documents that the agency cannot duplicate conveniently.

(d) An applicant shall submit directly to the agency responsible for issuing an authorization, an application for a state authorization requiring information that must be held in confidence by law, and any fee associated with a state authorization. The agency shall defer to their statutory requirements concerning the appropriate handling of the confidential information, and forward to the coordinating agency a copy of the application with the confidential information deleted, as appropriate. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.225. DETERMINATION OF COMPLETENESS AND NOTICE TO APPLICANT. (a) Except as provided under AS 46.14.160, the coordinating agency shall, within 14 days of receipt of a consistency review packet, determine whether the packet is complete.

(b) A consistency review packet is complete when

(1) the packet meets the submission requirements of 6 AAC 50.220;

(2) an authorizing resource agency determines an authorization application is sufficient to begin a review under its statutory and regulatory requirements; and

(3) the coordinating agency, in consultation with the authorizing resource agencies, determines the packet is sufficient for continued processing even though additional information may be required subsequently.

(c) If the coordinating agency determines the packet is complete, the coordinating agency shall notify the applicant and identify the start date for initiating the consistency review under 6 AAC 50.240.

(d) If the coordinating agency determines the packet is incomplete, the coordinating agency shall notify the applicant and identify the information necessary to make the consistency review packet complete. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.230. DETERMINATION OF THE SCOPE OF THE PROJECT SUBJECT TO CONSISTENCY REVIEW. Prior to the initiation of the consistency review and within the timeframes established under 6 AAC 50.240(a) and (b), the coordinating agency shall determine the scope of the project subject to a consistency review in accordance with 6 AAC 50.025 and 6 AAC 50.700. When a project requires an authorization from more than one resource agency,

DGC shall determine the scope of the project subject to review in consultation with the resource agency that requires an authorization. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.235. TIMING OF A CONSISTENCY REVIEW. (a) Except as provided under 6 AAC 50.280, the consistency review process shall be completed within 30 or 50 days.

(b) A project will be subject to a 30-day consistency review when all required authorizations for the activities, as identified under 6 AAC 50.750, are listed as authorizations subject to a 30-day review.

(c) A project will be subject to a 50-day consistency review when a required authorization for an activity, as identified under 6 AAC 50.750, is listed as an authorization subject to a 50-day review. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.240. INITIATION OF A CONSISTENCY REVIEW. (a) When a project requires an authorization from two or more resource agencies, DGC shall, following receipt of a complete consistency review packet, start Day 1 of the consistency review as soon as practicable, but no more than 14 days from the date DGC receives a complete consistency review packet under 6 AAC 50.220.

(b) A single-agency consistency review may start at the time the agency initiates its authorization review, provided the consistency review packet is complete.

(c) Day 1 of a consistency review is the date on which the coordinating agency's public notice is provided in accordance with 6 AAC 50.500.

(d) By Day 3, the coordinating agency shall

(1) provide to the applicant a notice that the project review has been initiated and a review schedule;

(2) provide to each review participant a copy of the consistency review packet and the review schedule with a solicitation for reviewers' comments and a deadline for receipt of comment; and

(3) provide a copy of the consistency review packet to a person requesting the information; or

(4) make a copy of the consistency review packet available for public inspection and copying at a public place in an area that the project may affect, including within a district that the coordinating agency considers is likely an affected coastal resource district. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.245. REQUEST FOR ADDITIONAL INFORMATION. (a) By Day 13 in a 30-day consistency review or Day 25 in a 50-day consistency review, a review participant shall provide the coordinating agency with any request for additional information necessary to determine whether the requestor concurs with or objects to the applicant's consistency

certification. A resource agency may request additional information necessary for a resource agency authorization review.

(b) The coordinating agency may, by Day 13 in a 30-day consistency review or by Day 25 in a 50-day consistency review, request additional information at its own initiative or based on a request received under (a) of this section.

(c) The coordinating agency shall request from the applicant additional information relevant to the proposed project appropriate in the context of the requestor's expertise and area of responsibility. If a request for additional information is submitted to the coordinating agency that is outside the requestor's expertise or area of responsibility, the coordinating agency will consult with all review participants with expertise or responsibility to determine whether the requested information is necessary to evaluate the project's consistency with the enforceable policies of the ACMP.

(d) The applicant shall provide the requested information to the requestor and a copy to the coordinating agency. The coordinating agency shall ensure that other review participants receive the additional information.

(e) The requestor shall notify the coordinating agency when the requested information is received. Within seven days after receiving the information, the requestor shall notify the coordinating agency whether the information is adequate. If the information is found to be inadequate, the requestor shall

(1) explain how the information submitted is inadequate; and

(2) identify the information that is needed that would satisfy the original request or new issues raised in the response thereto. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160

AS 46.40.040

AS 46.40.096

AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.250. COMMENT DEADLINES. Except as provided under 6 AAC 50.280(a)(1), the coordinating agency shall establish the deadline for receipt of comments at Day 17 in a 30-day review and Day 30 in a 50-day review. The deadline for receipt of comments from a resource agency or coastal resource district may be extended as necessary under 6 AAC 50.280(a)(8). (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160

AS 46.40.040

AS 46.40.096

AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.255. REVIEW PARTICIPANT COMMENT. (a) A comment submitted by a review participant shall

(1) be in writing; and

(2) identify and explain why the review participant concurs with the applicant's consistency certification that the proposed project complies with and will be conducted in a manner consistent with the enforceable policies of the ACMP; or

(3) identify that the review participant objects to the applicant's consistency certification that the proposed project complies with and will be conducted in a manner consistent with the enforceable policies of the ACMP, and

(A) explain how the proposed project is inconsistent with the enforceable policies of the ACMP;

(B) identify the specific enforceable policies and rationale for the inconsistent finding; and

(C) identify any alternative measure that, if adopted by the applicant, would achieve consistency with the enforceable policies of the ACMP, and explain how the alternative measure would achieve consistency with the specific enforceable policies of the ACMP.

(b) In its consistency review comment, a review participant may address an enforceable policy outside their expertise or area of responsibility. The coordinating agency may only give a resource agency or coastal resource district due deference within that agency's or district's expertise or area of responsibility.

(c) The coordinating agency shall send or ensure that the applicant, each resource agency and any potentially affected coastal resource district receive a copy of timely submitted comments. Upon request, the coordinating agency shall send or ensure that other persons interested in the project receive a copy of the comments. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.260. PROPOSED CONSISTENCY DETERMINATION. (a) In developing a proposed consistency determination, the coordinating agency shall give careful consideration to all comments, and shall give a commenting resource agency and coastal resource district with an approved program due deference within that agency's or district's expertise or area of responsibility. In developing a proposed consistency determination and any applicable alternative measures, the coordinating agency must evaluate the applicability of the enforceable policies to the proposed activity and decide how to afford due deference to the commentors.

(b) Based on the comments received and other available information, the coordinating agency shall determine whether there is consensus among the review participants regarding a project's consistency with the enforceable policies of the ACMP and any alternative measures that would achieve consistency with the enforceable policies of the ACMP.

(c) When the comments indicate there is not consensus, the coordinating agency shall facilitate a discussion among the review participants to attempt to reach a consensus. When participants cannot reach consensus, the coordinating agency shall develop a proposed consistency determination that considers the comments and positions of the resource agencies and affected coastal resource districts.

(d) When the coordinating agency substantially modifies or rejects an alternative measure requested by a commenting review participant within its respective area of expertise or responsibility, the coordinating agency shall consult with the commentor and provide a brief written explanation stating the reasons for rejecting or modifying the alternative measure before issuance of the proposed consistency determination.

(e) By Day 24 in a 30-day review and Day 44 in a 50-day review, the coordinating agency shall distribute a proposed consistency determination to the review participants, the applicant, and any person who submitted timely ACMP comments under 6 AAC 50.500(a)-(c).

(f) The proposed consistency determination must

- (1) contain a description of the proposed project;
- (2) contain the scope of the project subject to review;
- (3) indicate whether the state

(A) concurs with the applicant's consistency certification that the proposed project is consistent with the enforceable policies of the ACMP; or

(B) objects to the applicant's consistency certification that the proposed project is consistent with the enforceable policies of the ACMP; and

(4) contain a statement identifying the availability of an elevation under 6 AAC 50.600, and the deadline for submitting a request for elevation under 6 AAC 50.600.

(g) In addition to the requirements in (f) of this section, when the state concurs with the applicant's consistency certification, the proposed consistency determination must include an evaluation of the project against the applicable enforceable policies of the ACMP.

(h) In addition to the requirements in (f) of this section, when the state objects to the applicant's consistency certification, the coordinating agency shall notify the applicant of the objection and shall include in the proposed consistency determination

(1) an explanation of how the proposed project is inconsistent with the enforceable policies of the ACMP;

(2) the identification of the specific enforceable policies and rationale for the inconsistent finding; and

(3) any alternative measure that, if adopted by the applicant, would achieve consistency with the enforceable policies of the ACMP, and an explanation of how the alternative measures would achieve consistency with the specific enforceable policies of the ACMP; the alternative measure shall be described with sufficient specificity to allow the applicant to determine whether to

(A) adopt the alternative measure;

(B) otherwise modify the project to achieve consistency with the enforceable policies of the ACMP; or

(C) abandon the project.

(i) When a project is modified under (h)(3)(B) of this section, or if the coordinating agency is able to informally resolve an issue that has or could result in the submission of a request for elevation under 6 AAC 50.600, the coordinating agency, with the applicant's concurrence, may issue a revised proposed consistency determination.

(j) The coordinating agency may immediately issue a final consistency determination under 6 AAC 50.265 if the review participants concur with the proposed consistency determination and the applicant adopts the alternative measures, if any, identified under (h)(3) of this section. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 46.40.020	AS 46.40.096
	AS 44.19.160	AS 46.40.040	AS 46.40.100
	AS 44.19.161		

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.265. FINAL CONSISTENCY DETERMINATION. (a) The final consistency determination shall meet the requirements of 6 AAC 50.260(f)(1)-(3) and (g) or (h) as appropriate, and include any change made between the proposed and final determination including

(1) the adoption of any alternative measures by the applicant as part of the project description; and

(2) any minor editorial or technical corrections.

(b) The coordinating agency shall distribute the final consistency determination to the applicant, each commenting review participant, an agency that commented on the project, and a person who submitted timely ACMP comments under 6 AAC 50.500(a)-(c).

(c) The applicant's project description, as provided in 6 AAC 50.220(a)(1), modified by the adoption of any alternative measure that would achieve consistency with the enforceable policies of the ACMP, modified by the applicant under 6 AAC 50.260(h)(3)(B), and described in the final consistency determination issued under (a) of this section is a legally binding description of the project. A resource agency may enforce the adopted alternative measure, project modifications, and the project description according to the agency's priorities, available resources, and preferred methods.

(d) A final consistency determination is a final administrative order and decision under the ACMP. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 46.40.020	AS 46.40.096
	AS 44.19.160	AS 46.40.040	AS 46.40.100
	AS 44.19.161		

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.270. TIME FOR ISSUANCE OF A FINAL CONSISTENCY

DETERMINATION. (a) The final consistency determination will be issued by Day 30 in a 30-day review and Day 50 in a 50-day review except as described in subsection (b) of this section.

(b) The final consistency determination will be issued

(1) five days after the review participants receive the proposed consistency determination when the coordinating agency does not receive a timely request for a director-level elevation under 6 AAC 50.600(a);

(2) five days after the review participants receive a director-level proposed consistency determination when a request for elevation to the commissioners under 6 AAC 50.600(i) is not filed on the director-level proposed consistency determination; or

(3) no later than 15 days after the director-level proposed determination is elevated to the commissioners' for a decision. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.160	AS 46.40.040	AS 46.40.100
	AS 44.19.161	AS 46.40.096	

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.275. RESOURCE AGENCY AUTHORIZATION. (a) A resource agency shall not issue an authorization for an activity that is part of a project that is subject to a consistency review unless the coordinating agency issues a final consistency determination that has concurred with the applicant's consistency certification that the project is consistent with the applicable enforceable policies of the ACMP.

(b) Following issuance of a final consistency determination, a resource agency may not include an additional alternative measure on its authorization.

(c) When an agency's authorization contains a requirement more restrictive than that described in the project description under 6 AAC 50.265, or the project description is more restrictive than an agency's similar requirement, the more restrictive project description or agency requirement shall be controlling.

(d) Except for a disposal of interest in state land, when the state has concurred with the applicant's consistency certification that the project is consistent with the enforceable policies of the ACMP, a resource agency shall issue an authorization necessary for a project within five days after the agency issues or receives the final consistency determination, unless the agency finds additional time is necessary to fulfill its statutory or regulatory requirements.

(e) When the state has concurred with the applicant's consistency certification that the project is consistent with the enforceable policies of the ACMP and after DNR issues or receives the final consistency determination, DNR shall authorize a disposal of interest in state land at the time and in the manner provided by applicable law, regulation, and agency procedure.

(f) A resource agency authorization may serve as the consistency determination for a project provided

- (1) the requirements of 6 AAC 50.500-.520 are met;
- (2) the opportunity for elevation under 6 AAC 50.600 is provided; and
- (3) the project is evaluated against the enforceable policies of the ACMP.

(g) Notwithstanding a finding of concurrence for a project, a resource agency may deny approval of an authorization application under that agency's own statutory and regulatory authorities. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.160	AS 46.40.040	AS 46.40.100
	AS 44.19.161	AS 46.40.096	

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.280. CONSISTENCY REVIEW SCHEDULE MODIFICATION AND TERMINATION. (a) The coordinating agency may modify the consistency review schedule under the following circumstances and for the time specified:

(1) the coordinating agency and resource agency may agree to modify the review schedule as necessary to coordinate the consistency review with the agency's statutory or regulatory authorization review process, including a DNR disposal of state's interest, provided the length of time for receipt of comments is at least as long as under 6 AAC 50.250;

(2) when the coordinating agency receives a request for additional information from a review participant under 6 AAC 50.245, the coordinating agency may modify the review schedule by up to 3 days to evaluate the request, and consult with other review participants with expertise or responsibility;

(3) when the coordinating agency requests additional information from the applicant under 6 AAC 50.245, the coordinating agency may modify the review schedule as necessary until the requesting review participant receives the information and considers it adequate within the timeframe identified under 6 AAC 50.245(e);

(4) the coordinating agency may modify the review schedule as necessary for a public hearing or public meeting that is held as part of

(A) a consistency review;

(B) a resource agency's review of a necessary authorization application; or

(C) preparation of an affected coastal resource district's comments for submission to the coordinating agency;

(5) the coordinating agency may modify the review schedule as necessary for the adjudication process of an authorization issued by a coastal resource district exercising Title 29 authorities, provided the coastal resource district's consistency review comments under 6 AAC 50.255 are pending the results of the adjudication;

(6) the coordinating agency may extend the review schedule at the request of the applicant;

(7) the coordinating agency may modify the review schedule to obtain legal guidance addressing an apparent conflict between statutory or regulatory provisions;

(8) the coordinating agency may modify the review schedule by up to 5 days for a resource agency or coastal resource district to consider timely submitted public comments;

(9) the coordinating agency may extend the comment deadline by up to 10 days for a project within a coastal resource service area;

(10) the coordinating agency may extend the review schedule by up to 10 days if a review participant requests time for a field review;

(11) the coordinating agency may modify the review schedule as necessary following distribution of the proposed consistency determination to assure the applicant receives the determination;

(12) when the coordinating agency issues a revised proposed consistency determination under 6 AAC 50.260(i) or 6 AAC 50.475(e), the coordinating agency may modify the review schedule by up to 5 days to allow for the submission of an elevation under 6 AAC 50.600;

(13) when the coordinating agency receives a request for elevation under 6 AAC 50.600, the coordinating agency shall suspend the review schedule by up to 15 days for each elevation.

(b) The coordinating agency shall notify the applicant and each review participant of the terms of a schedule modification.

(c) When the coordinating agency restarts a review that was suspended under this section, the day that the review is restarted shall be assigned the day of the review schedule on which the review was suspended.

(d) A resource agency may deny an authorization any time before, during or after the consistency review has been completed. When an authorization is denied during a consistency review, the coordinating agency and review participants may agree to suspend or terminate the consistency review, as they deem appropriate, on a case by case basis. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160

AS 46.40.040

AS 46.40.096

ARTICLE 3. CONSISTENCY REVIEW PROCESS FOR FEDERAL ACTIVITIES **[GENERAL PROVISIONS]**

305. Federal Activities Subject to Consistency Review

310. Repealed [ELIGIBILITY TO PETITION ON A PROPOSED CONSISTENCY DETERMINATION]

315. Repealed [CITIZEN OF AN AFFECTED COASTAL RESOURCE DISTRICT]

316. Pre-review Assistance for a Federal Activity

320. Repealed [NOTICE OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION]

325. Federal Consistency Determination

330. Repealed [FILING AND DISTRIBUTION OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION]

335. Initiation of Consistency Review of a Federal Consistency Determination

340. Repealed [RESPONSES TO PETITION ON A PROPOSED CONSISTENCY DETERMINATION]

345. Request for Additional Information for a Federal Consistency Determination

350. Repealed [COUNCIL HEARING OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION]

355. Comment Deadline and Review Schedule Modification or Extension

360. Repealed [PETITION ON PROGRAM IMPLEMENTATION; PROCESS ON THE PETITION]

365. Review Participant Comments Regarding a Federal Consistency Determination

370. Repealed [GENERAL HEARING PROCEDURES ON PETITIONS]

375. Proposed Consistency Response to a Federal Consistency Determination

380. Elevation of and Informal Negotiation on a Federal Consistency Determination

385. Final Consistency Response to a Federal Consistency Determination

390. Resource Agency Authorization

395. Process for Federal Negative Determination

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.305. FEDERAL ACTIVITIES SUBJECT TO CONSISTENCY REVIEW. In accordance with 15 C.F.R. 930.30-.46, as amended, federal agency activities which initiate an event or series of events with reasonably foreseeable direct or indirect effects on any coastal use or resource must be undertaken in a manner consistent, to the maximum extent practicable, with the enforceable policies of the ACMP. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145

6 AAC 50.310 is repealed:

6 AAC 50.310. ELIGIBILITY TO PETITION ON A PROPOSED CONSISTENCY DETERMINATION. Repealed. (Eff. 7/1/99, Register 150; am 2/13/2000, Register 153; repealed ____/____/200__, Register ____)

6 AAC 50.315 is repealed:

6 AAC 50.315. CITIZEN OF AN AFFECTED COASTAL RESOURCE DISTRICT. Repealed. (Eff. 2/13/2000, Register 153; repealed ____/____/200__, Register ____)

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.316. PRE-REVIEW ASSISTANCE FOR A FEDERAL AGENCY. At the request of a federal agency, DGC shall provide pre-review assistance in accordance with 6 AAC 50.216. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145

AS 44.19.160

AS 46.40.100

6 AAC 50.320 is repealed:

6 AAC 50.320. NOTICE OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION. Repealed. (Eff. 7/1/99, Register 150; am 2/13/2000, Register 153; repealed ____/____/200__, Register ____)

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.325. FEDERAL CONSISTENCY DETERMINATION. (a) In accordance with 15 C.F.R. 930.30-.46, as amended, a federal agency shall provide DGC a consistency determination for a federal activity affecting any coastal use or resource.

(b) Upon receipt of a federal consistency determination, DGC shall review the determination for completeness in accordance with the requirements of (c) of this section and shall immediately notify the federal agency if the determination is not complete.

(c) To be complete, a federal consistency determination must include:

(1) a brief statement indicating whether the proposed activity will be undertaken in a manner consistent to the maximum extent practicable with the enforceable policies of the ACMP;

(2) a detailed description of the activity, its associated facilities, and their coastal effects;

(3) an evaluation of the proposed activity against applicable enforceable policies; and

(4) comprehensive data and information sufficient to support the federal agency's consistency statement.

(d) The amount of detail in the evaluation of the enforceable policies, activity description and supporting information shall be commensurate with the expected coastal effects of the activity. The Federal agency may submit the necessary information in any manner it chooses, so long as the requirements of this section are met.

(e) To the extent required by federal law, a federal consistency determination shall include

(1) a copy of any necessary resource agency authorization application; the application must meet the authorizing agency's statutory and regulatory requirements for completeness; and
(2) completed copies of all necessary federal authorization applications.

(f) DGC may require that the federal agency provide additional copies of the consistency review packet, maps, or other documents that DGC cannot duplicate conveniently. (Eff.

____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 44.19.161	AS 46.40.096
	AS 44.19.160	AS 46.40.040	

6 AAC 50.330 is repealed:

6 AAC 50.330. FILING AND DISTRIBUTION OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION. Repealed. (Eff. 7/1/99, Register 150; repealed ____/____/200__, Register ____)

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.335. INITIATION OF CONSISTENCY REVIEW OF A FEDERAL CONSISTENCY DETERMINATION. (a) The consistency review process, as contained in 6 AAC 50.305-.395, shall be initiated, coordinated, and completed, to the extent practicable, within the timeframes specified in 15 C.F.R. 930, Subpart C.

(b) Upon receipt of a complete federal consistency determination as defined in 6 AAC 50.325(c), (d), and (e), DGC will immediately initiate a coordinated consistency review as follows:

(1) establish Day 1 of the consistency review as the date on which the public notice is provided in accordance with 6 AAC 50.500; and

(2) by Day 3, DGC shall

(A) provide to the federal agency a notice that the project review has been initiated and a review schedule;

(B) provide to each review participant a copy of the federal consistency determination, supporting information, a review schedule with a solicitation for the reviewer's comment, and a deadline for receipt of comment; and

(C) provide a copy of the federal consistency determination and supporting information to a person requesting the information; or

(D) make a copy of the federal consistency determination and supporting information available for public inspection and copying at a public place in an area that the project may affect, including within a district that the coordinating agency considers is likely an affected coastal resource district. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.160	AS 46.40.040	AS 46.40.096
	AS 44.19.161		

6 AAC 50.340 is repealed:

6 AAC 50.340. RESPONSES TO PETITION ON A PROPOSED CONSISTENCY DETERMINATION. Repealed. (Eff. 7/1/99, Register 150; repealed ____/____/200__, Register ____)

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.345. REQUEST FOR ADDITIONAL INFORMATION FOR A FEDERAL CONSISTENCY DETERMINATION. (a) By Day 25 of the coordinated consistency review, a

review participant shall provide DGC with any request for additional information necessary to determine whether the requestor concurs with or objects to the federal consistency determination.

(b) DGC may request additional information at its own initiative or based on a request received under (a) of this section.

(c) DGC shall request from the federal agency additional information relevant to the proposed project that is appropriate in the context of the requestor's area of expertise or responsibility. If a request for additional information is submitted that is outside the requestor's area of expertise or responsibility, DGC will consult with all review participants with expertise or responsibility to determine whether the requested information is necessary to evaluate the project's consistency with the enforceable policies of the ACMP.

(d) Unless otherwise agreed to by DGC and the federal agency, the federal agency shall provide the requested information to DGC. The applicant shall provide sufficient copies of the requested information to DGC for distribution to other interested review participants. DGC shall provide the requested information to the requestor and other interested review participants.

(e) The requestor shall notify DGC within seven days after receiving the information whether the information is adequate. If the information is found to be inadequate, the requestor shall

(1) explain how the information submitted is inadequate; and

(2) identify the information that is needed that would satisfy the original request or new issues raised in the response thereto. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50.350 is repealed:

6 AAC 50.350. COUNCIL HEARING OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION. Repealed. (Eff. 7/1/99, Register 150; repealed ____/____/200__, Register ____)

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.355. COMMENT DEADLINE AND REVIEW SCHEDULE MODIFICATION OR EXTENSION. (a) The coordinating agency shall establish a 30-day comment deadline for receipt of public and review participant comment.

(b) The review schedule may be modified or extended as provided under 6 AAC 50.280(a), provided the final consistency response is submitted to the federal agency by the deadline set by federal regulation at 15 C.F.R. 930.30-.46, as amended, including any extensions granted by the federal agency. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50.360 is repealed:

6 AAC 50.360. PETITION ON PROGRAM IMPLEMENTATION; PROCESS ON THE PETITION. Repealed. (Eff. 7/1/99, Register 150; repealed ____/____/200__, Register ____)

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.365. REVIEW PARTICIPANT COMMENTS REGARDING A FEDERAL CONSISTENCY DETERMINATION. A comment submitted by a review participant shall

(1) be in writing; and

(2) identify and explain why the review participant concurs with the federal consistency determination that the proposed project complies with and will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of the ACMP; or

(3) identify that the review participant objects to the federal consistency determination that the proposed project complies with and will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of the ACMP, and

(A) explain how the proposed project is inconsistent with the enforceable policies of the ACMP;

(B) identify the specific enforceable policies and rationale for the inconsistent finding; and

(C) identify and describe any alternative measure and explain how the alternative measure would, if adopted by the federal agency, allow the proposed activity to be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of the ACMP. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50.370 is repealed:

6 AAC 50.370. GENERAL HEARING PROCEDURES ON PETITIONS. Repealed.
(Eff. 7/1/99, Register 150; repealed ____/____/200__, Register ____)

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.375. PROPOSED CONSISTENCY RESPONSE TO A FEDERAL CONSISTENCY DETERMINATION. (a) DGC shall develop a proposed consistency response in accordance with 6 AAC 50.260(a)-(d), (i)(2) and (j).

(b) By day 44 of the coordinated consistency review, DGC will provide a federal agency a proposed consistency response that

(1) contains a description of the proposed federal activity;

(2) contains the scope of the federal activity subject to review;

(3) indicates whether the state

(A) concurs with the federal agency's consistency determination;

(B) objects to the federal agency's consistency determination; or

(C) requests an extension for the state consistency response; and

(4) contains a statement identifying the availability of an elevation under 6 AAC 50.600, and the deadline for submitting a request for elevation under 6 AAC 50.600.

(c) In addition to the requirements in (b) of this section, when the state concurs with the federal consistency determination that a proposed federal activity is consistent with the enforceable policies of the ACMP, the proposed consistency response must include an evaluation of the project against applicable enforceable policies sufficient to support the consistent finding. The evaluation may reference the federal consistency determination, if the determination sufficiently supported the consistency finding that the proposed federal activity is consistent with the enforceable policies of the ACMP.

(d) In addition to the requirements in (b) of this section, when the state objects to the federal agency's consistency determination, DGC shall notify the federal agency and the Director of OCRM of the objection in the proposed consistency response. The response shall include:

(1) a statement as to the proposed project is inconsistent with the specific enforceable policies of the ACMP;

(2) the identification of the specific enforceable policies and rationale for the inconsistent finding;

(3) the identification and description of any alternative measure that, if adopted by the federal agency, would achieve consistency to the maximum extent practicable with the applicable enforceable policies of the ACMP;

(4) if the objection is based on the failure of the federal agency to supply adequate information to determine the consistency of the federal agency activity with the enforceable policies of the ACMP, the nature of the information requested for further consideration, and an explanation regarding the necessity of having such information; and

(5) a statement informing the federal agency of the availability of elevation under 6 AAC 50.600 and informal negotiation under 15 C.F.R. 930.111, as amended.

(e) A proposed consistency response is not the final response for purposes of federal consistency and is subject to elevation under 6 AAC 50.600. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 46.40.020	AS 46.40.096
	AS 44.19.160	AS 46.40.040	AS 46.40.100
	AS 44.19.161		

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.380. ELEVATION OF AND INFORMAL NEGOTIATION ON A PROPOSED CONSISTENCY RESPONSE. When a federal agency requests an elevation of the proposed consistency response, the elevation is informal negotiation under 15 C.F.R. 930.111, as amended. OCRM may be invited to assist in an elevation requested by a federal agency. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 44.19.160
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6 AAC 50 is amended by adding a new section to read:

6 AAC 50.385. FINAL CONSISTENCY RESPONSE TO A FEDERAL CONSISTENCY DETERMINATION. (a) By day 50 of the coordinated consistency review, DGC will provide a federal agency with a final consistency response indicating whether the state:

(1) concurs with the federal agency's determination; or

(2) objects to the federal agency's determination.

(b) When, following an elevation, the state continues to object to the federal agency's consistency determination, DGC shall notify the federal agency and the Director of OCRM of the objection in a final consistency response. The final response shall include:

(1) a statement as to how the proposed activity is inconsistent with the specific enforceable policies of the ACMP;

(2) the specific enforceable policies, including citations, and rationale for the inconsistent finding;

(3) the identification and description of any alternative measure that, if adopted by the federal agency, would achieve consistency to the maximum extent practicable with the applicable enforceable policies of the ACMP; and

(4) a statement informing the federal agency of the availability of the negotiation and mediation procedures of the Secretary of Commerce in accordance with 15 C.F.R. 930.110-.116, as amended. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 46.40.020	AS 46.40.096
	AS 44.19.160	AS 46.40.040	AS 46.40.100
	AS 44.19.161		

Editor's note: A federal agency proposing an activity should refer to 15 C.F.R. 930.30-.46, as amended, for federal agency responsibility under federal regulation.

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.390. RESOURCE AGENCY AUTHORIZATION. When a federal activity requires an authorization from a resource agency,

(1) DGC shall coordinate the start date for the consistency review with the resource agency authorization review process such that the federal timelines are met; and

(2) when a federal agency seeks mediation from the Secretary of Commerce, a resource agency shall not issue an authorization until negotiation is concluded; a final consistency response may be amended to reflect the outcome of the negotiation and mediation process. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160

AS 46.40.040

AS 46.40.100

AS 44.19.161

AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.395. PROCESS FOR FEDERAL NEGATIVE DETERMINATIONS. (a) In accordance with 15 C.F.R. 930.35, as amended, when a federal agency determines that there will not be effects to coastal uses and resources from a proposed federal activity, the federal agency shall provide DGC with a negative determination if the activity meets the criteria specified in 15 C.F.R. 930.35(a).

(b) A negative determination shall include

(1) a brief description of the activity;

(2) a map showing the activity's location; and

(3) the basis for the federal agency's determination that the activity will not affect any coastal use or resource.

(c) Upon receipt of a complete negative determination, DGC shall solicit comments regarding concurrence or objection to the negative determination from each resource agency and any potentially affected coastal resource district. DGC shall establish the deadline for receipt of comment as appropriate based on the scope and complexity of the activity.

(d) Within 60 days of receipt of a complete negative determination, DGC will

(1) concur with the federal agency's negative determination;

(2) object to the federal agency's negative determination; or

(3) request, in writing, an extension for the state response.

(e) When the state objects to a negative determination, the federal agency and DGC shall follow the process in 15 C.F.R. 930.35(c), as amended. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145

AS 44.19.160

ARTICLE 4. CONSISTENCY REVIEW PROCESS FOR FEDERALLY REGULATED ACTIVITIES

405. Federally Regulated Activities Subject to Consistency Review

416. Pre-review Assistance for an Applicant for a Federal Authorization

425. Consistency Certification

430. Determination of the Scope of the Project Subject to Consistency Review

435. Initiation of Consistency Review for a Consistency Certification

445. Request for Additional Information for a Consistency Certification

- 455. Comment Deadlines and Review Schedule Modifications and Extensions
- 465. Review Participant Comments Regarding a Consistency Certification
- 475. Proposed Consistency Response to a Consistency Certification
- 485. Final Consistency Response to a Consistency Certification
- 490. Resource Agency Authorization
- 495. Review Process for OCS Exploration, Development and Production Activities

6 AAC 50 is amended by adding a new section to read:

**6 AAC 50.405. ACTIVITIES REQUIRING A FEDERAL AUTHORIZATION
SUBJECT TO CONSISTENCY REVIEW.**

(a) In accordance with 15 C.F.R. 930.50-.66, as amended, activities requiring a federal authorization affecting any coastal use or resource are required to be conducted in a manner consistent with the enforceable policies of the ACMP.

Federal authorizations subject to consistency review include

- (1) Department of Agriculture, United States Forest Service permit for
 - (A) outfitter/guide for freshwater boat trips that include a designated area for exclusive commercial use by the permit holder;
 - (B) Mining Plans of Operation that require an Environmental Analysis or Environmental Impact Statement;
 - (C) mineral material sales and sites that are greater than five acres or not previously reviewed;
 - (D) hotel, motel, resort, service station, fish hatchery, mariculture, liquid waste disposal area, sewage transmission line, hydroelectric projects, oil and gas pipelines, airport, heliport, dam, reservoir, water transmission, fish ladder, power lines, telephone lines, water easement;
 - (E) ground disturbing construction that require an EA or EIS, or that require one or more of the following types of non-Forest Service permits:
 - (i) Environmental Protection Agency under Section 402 of the Clean Water Act;
 - (ii) U. S. Army Corps of Engineers under Section 404 of the Clean Water Act;
 - (iii) ADEC wastewater, solid waste, or air discharge permits;
 - (iv) ADFG Title 16 authorizations; or
 - (v) ADNR water rights and tidelands authorizations;
- (2) Department of Commerce, Office of Ocean and Coastal Resource Management, permit within Marine Sanctuaries under 33 U.S.C. 1401-1444;
- (3) Department of Defense, Army Corps of Engineers permit
 - (A) under Section 10 of the Rivers and Harbors Act, authorizing the construction of bridges, causeways, dams and dikes, and the obstruction of navigable waters;
 - (B) under Section 4(F) of the Outer Continental Shelf Lands Act and amendment, authorizing artificial islands or fixed structures on the outer continental shelf;
 - (C) under Section 103 of the Marine Protection Research and Sanctuaries Act, authorizing ocean dumping outside the limits of the territorial sea; and
 - (D) under Section 404 of the Federal Water Pollution Control Act, authorizing discharges into navigable waters;
- (4) Department of Energy, Federal Energy Regulatory Commission
 - (A) license for the construction and operation of non-federal hydroelectric projects and associated transmission lines under sections 4 (e) and 15 of the Federal Power Act at 16 U.S.C. 787(e) and 808;
 - (B) order for interconnection of electric transmission facilities under section 202(b) of the Federal Power Act at 16 U.S.C. 824a(b);

(C) permission and approval for the abandonment of natural gas pipeline facilities under section 7(b) of the Natural Gas Act at 717f(b); and

(D) certificate of public convenience and necessity for the construction and operation of natural gas pipeline facilities, including both interstate pipeline and LNG terminal facilities under section 7(c) of the Natural Gas Act at 15 U.S.C. 717f(c);

(5) Environmental Protection Agency

(A) permit required under Section 402 of the 1972 Federal Water Pollution Control Act and amendments, authorizing discharge of pollutants into navigable waters;

(B) permit required under Section 405 of the 1972 Federal Water Pollution Control Act and amendments, authorizing disposal of sewage sludge;

(C) permit for new sources or for modification of existing sources and waivers of compliance allowing extensions of time to meet air quality standards under Section 112(c)(1) of the 1972 Clean Air Act; and

(D) exemptions granted under the Clean Air Act for stationary sources;

(6) Department of the Interior

(A) Bureau of Land Management permit and license for drilling and mining and related facilities on public lands;

(B) Bureau of Land Management and Minerals Management Service permit for pipeline rights-of-way on public lands and the Outer Continental Shelf;

(C) permit and license for rights-of-way on public lands; and

(D) Minerals Management Service Outer Continental Shelf exploration or development and production plans which describe in detail federal license and permit activities;

(7) Nuclear Regulatory Commission permit and license for the siting, construction, and operation of nuclear facilities;

(8) Department of Transportation, United States Coast Guard permit

(A) for construction or modification of bridge structures and causeways across navigable waters;

(B) for siting, construction, and operation of deepwater ports;

(c) under Section 9 of the Rivers and Harbors Act, authorizing the construction of bridges, causeways, dams and dikes, and the obstruction of navigable waters; and

(9) permit and license subject to 15 C.F.R. 930.54(c).

(b) In accordance with 15 C.F.R. 930.54, as amended, DGC may notify a federal agency, the applicant, and the Director of OCRM of unlisted activities requiring a federal authorization affecting any coastal use or resource that requires a consistency review. An unlisted federal authorization shall be subject to coastal program review upon approval by the Director of OCRM. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.160

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.416. PRE-REVIEW ASSISTANCE FOR AN APPLICANT FOR A FEDERAL AUTHORIZATION. At the request of an applicant for a federal authorization, DGC shall provide pre-review assistance in accordance with 6 AAC 50.216. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.160 AS 46.40.100

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.425. CONSISTENCY CERTIFICATION. (a) In accordance with 15 C.F.R. 930.50-.66, as amended, an applicant for a federal authorization subject to review under the ACMP shall provide in the application to the federal authorizing agency a certification that the project complies with and will be conducted in a manner consistent with the ACMP. The applicant shall provide a copy of the certification to DGC along with the necessary data and information identified in (c) of this section.

(b) Except as provided for in AS 46.14.160, DGC shall, within 14 days of receipt of a consistency determination, review the information and data for completeness in accordance with the requirements of (c) of this section and shall notify the applicant if the information and data are not complete.

(c) To be complete, a consistency certification must include a completed CPQ which includes

(1) a complete and detailed description of the proposed project with sufficient specificity for the coordinating agency to determine the purpose of the proposed project and the potential impact to any coastal use or resource;

(2) data and information sufficient to support the applicant's consistency certification;

(3) maps, diagrams, technical data and other relevant material that precisely describe the site location, topographical information, township, range, section, and meridian, and other site specific information;

(4) the applicant's consistency certification as required by (a) of this section, which shall state "The proposed project complies with the applicable enforceable policies of the Alaska coastal management program and will be conducted in a manner consistent with the program;"

(5) a signature and the date signed;

(6) a copy of all resource agency authorization applications required for the project, except as provided in (f) of this section; the application must meet the authorizing resource agency's statutory and regulatory requirements for completeness; and

(7) completed copies of all necessary federal authorization applications.

(d) If an applicant fails to submit a complete consistency certification, DGC shall notify the applicant and the federal agency of the certification or information deficiencies, and that

(1) the consistency review has not begun and that the review will commence when the applicant corrects the certification or information deficiencies; or

(2) the consistency review has begun, and that the applicant shall correct the certification or information deficiencies during the review period.

(e) DGC, on its own initiative or at the request of a coastal resource district or a resource agency, may require that the applicant provide additional copies of the consistency review packet, maps or other documents that DGC or the agency cannot duplicate conveniently.

(f) An applicant shall submit directly to the agency responsible for issuing an authorization, an application for a federal or state authorization requiring information that must be held in confidence by law, and any fee associated with the authorization. The agency shall defer to their statutory requirements concerning the appropriate handling of the confidential information, and forward to the coordinating agency a copy of the application with the confidential information deleted, as appropriate. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.161 AS 46.40.096
AS 44.19.160 AS 46.40.040

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.430. DETERMINATION OF THE SCOPE OF THE PROJECT SUBJECT TO CONSISTENCY REVIEW. Prior to the initiation of the consistency review and within the

timeframes established under 6 AAC 50.435, DGC shall determine the scope of the project subject to review in accordance with 6 AAC 50.025 and 6 AAC 50.700.

Authority: AS 44.19.160 AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.435. INITIATION OF CONSISTENCY REVIEW FOR A CONSISTENCY CERTIFICATION. Within 14 days of receipt of a complete consistency certification or a consistency certification under 6 AAC 50.425(d)(2), DGC will initiate a coordinated consistency review as follows:

(1) establish Day 1 of the consistency review as the date on which the public notice is provided in accordance with 6 AAC 50.500; and

(2) by Day 3, DGC shall

(A) provide to the applicant and federal agency a notice that the project review has been initiated and a review schedule;

(B) provide to each review participant a copy of the consistency certification, supporting information, a review schedule that includes a solicitation for reviewers' comments, and a deadline for receipt of comment; and

(C) provide a copy of the consistency certification and supporting information to a person requesting the information; or

(D) make a copy of the consistency certification and supporting information available for public inspection and copying at a public place in an area that the project may affect, including within a district that the coordinating agency considers is likely an affected coastal resource district. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.445. REQUEST FOR ADDITIONAL INFORMATION FOR A CONSISTENCY CERTIFICATION. (a) By Day 25 of the coordinated consistency review, a review participant shall provide DGC with any request for additional information necessary to determine whether the requestor concurs with or objects to the consistency certification.

(b) DGC may, by Day 25 of the consistency review, request additional information at its own initiative or based on a request received under (a) of this section.

(c) DGC shall request from the applicant additional information relevant to the proposed project that is appropriate in the context of the requestor's area of expertise or responsibility. If a request for additional information is submitted that is outside the requestor's area of expertise or responsibility, DGC will consult with all review participants with expertise or responsibility to determine whether the requested information is necessary to evaluate the project's consistency with the enforceable policies of the ACMP.

(d) Unless otherwise agreed to by DGC and the applicant, the applicant shall provide the requested information to DGC. The applicant shall provide sufficient copies of the requested information to DGC for distribution to other interested review participants. DGC shall provide the requested information to the requestor and other interested review participants.

(e) The requestor shall notify DGC within seven days after receiving the information whether the information is adequate. If the information is found to be inadequate, the requestor shall

(1) explain how the information submitted is inadequate; and

(2) identify the information that is needed that would satisfy the original request or new issues raised in the response thereto. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.455. COMMENT DEADLINES AND REVIEW SCHEDULE MODIFICATIONS AND EXTENSIONS. (a) Except as provided under 6 AAC 50.280(a)(1), DGC shall establish a 30-day comment deadline for receipt of public and review participant comment.

(b) The review schedule may be modified or extended as provided under 6 AAC 50.280(a), provided the final consistency response is submitted to the federal agency by the deadline set by federal law at 15 C.F.R. 930.50-.66, as amended.

(c) To the extent feasible, DGC shall adhere to the deadlines for issuance of a proposed and final consistency response in this chapter. If DGC has not issued a proposed consistency response within three months of receipt of a complete consistency certification, DGC shall notify the applicant and federal agency of the status of the review and the reason for further delay.

(d) DGC and an applicant may mutually agree to stay the consistency review or extend the six-month federal review period. An agreement must be in writing. DGC shall provide a copy of the agreement to the federal authorizing agency. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.096
AS 44.19.161

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.465. REVIEW PARTICIPANT COMMENTS REGARDING A CONSISTENCY CERTIFICATION. (a) A comment submitted by a review participant shall

(1) be in writing; and

(2) identify and explain why the review participant concurs with the applicant's consistency certification that the proposed project complies with and will be conducted in a manner consistent with the enforceable policies of the ACMP; or

(3) identify that the review participant objects to the applicant's consistency certification that the proposed project complies with and will be conducted in a manner consistency with the enforceable policies of the ACMP, and

(A) explain how the proposed project is inconsistent with the enforceable policies of the ACMP;

(B) identify the specific enforceable policies and rationale for the inconsistent finding; and

(C) identify any alternative measure that, if adopted by the applicant, would achieve consistency with the enforceable policies of the ACMP, and explain how that alternative measure would achieve consistency with the specific enforceable policies of the ACMP.

(b) In its consistency review comment, a review participant may address an enforceable policy outside their area of expertise or responsibility. DGC may only give a resource agency or coastal resource district due deference within that agency's or district's area of expertise or responsibility.

(c) DGC shall send or ensure that the applicant, each resource agency and any potentially affected coastal resource district receives a copy of timely submitted comments. Upon request,

DGC shall send a copy of the comments to other persons interested in the project. (Eff.

____/____/200__, Register ____)

Authority: AS 44.19.160
AS 44.19.161

AS46.40.040

AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.475. PROPOSED CONSISTENCY RESPONSE TO A CONSISTENCY CERTIFICATION. (a) DGC shall develop a proposed consistency response in accordance with 6 AAC 50.260(a)-(d) and (j).

(b) By day 44 of the coordinated consistency review, DGC shall provide the applicant, the federal agency, each commenting review participant, an agency that commented on the project, and a person who submitted timely ACMP comments under 6 AAC 50.500(a)-(c) with a proposed consistency response that

- (1) contains a description of the proposed project;
- (2) contains the scope of the project subject to review;
- (3) indicates whether the state

(A) concurs with the applicant's consistency certification that the proposed project is consistency with the enforceable policies of the ACMP; or

(B) objects to the applicant's consistency certification that the proposed project is consistency with the enforceable policies of the ACMP; and

(4) contains a statement identifying the availability of an elevation under 6 AAC 50.600, and the deadline for submitting a request for elevation under 6 AAC 50.600.

(c) In addition to the requirements in (b) of this section, when the state concurs with the applicant's consistency certification, the proposed consistency response must include an evaluation of the project against the applicable enforceable policies of the ACMP sufficient to support the finding.

(d) In addition to the requirements in (b) of this section, when the state objects to the applicant's consistency certification, DGC shall notify the applicant, the federal agency, and the Director of OCRM of its objection in the proposed consistency response. The response shall include

(1) an explanation of how the proposed project is inconsistent with the specific enforceable policies of the ACMP;

(2) the identification of the specific enforceable policies and rationale for the inconsistent finding;

(3) any alternative measure that, if adopted by the applicant, would achieve consistency with the applicable enforceable policies of the ACMP, and an explanation of how the alternative measure would achieve consistency with the enforceable policies of the ACMP; the alternative measure shall be described with sufficient specificity to allow the applicant to determine whether to

(A) adopt the alternative measure;

(B) otherwise modify the project to achieve consistency with the enforceable policies of the ACMP;

(C) abandon the project; or

(D) file an appeal under 15 C.F.R. 930.120-.132; and

(4) if the objection is based on the failure of the applicant to supply adequate information under 6 AAC 50.425(d)(2) or 6 AAC 50.445(d), the nature of the information requested and an explanation regarding the necessity of having such information.

(e) DGC, with the applicant's concurrence, may issue a revised proposed consistency determination

(1) based upon a project modification developed under (d)(3)(B) of this section; or

(2) if the coordinating agency is able to informally resolve an issue that has or could result in the submission of a request for elevation under 6 AAC 50.600.

(f) The coordinating agency may immediately issue a final consistency determination under 6 AAC 50.485 if the review participants concur with the proposed consistency determination and the applicant adopts the alternative measures, if any, identified under (d)(3) of this section.

(g) A proposed consistency response is not the final response for purposes of federal consistency and is subject to elevation under 6 AAC 50.600. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 46.40.020	AS 46.40.096
	AS 44.19.160	AS 46.40.040	AS 46.40.100
	AS 44.19.161		

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.485. FINAL CONSISTENCY RESPONSE TO A CONSISTENCY

CERTIFICATION. (a) Within 50 days of receipt of the applicant's consistency certification, DGC shall provide the applicant, the federal agency, each commenting review participant, an agency that commented on the project, and a person who submitted timely ACMP comments under 6 AAC 50.500(a)-(c) with a final consistency response. The final consistency response shall meet the requirements of 6 AAC 50.475(a)-(b) and (c) or (d) as appropriate, and include any change made between the proposed and final determination including

(1) the adoption of any alternative measures by the applicant as part of the project description; and

(2) any minor editorial or technical corrections.

(b) The applicant's project description, as provided in 6 AAC 50.425(c), modified by the adoption of any alternative measure that would achieve consistency with the enforceable policies of the ACMP, modified by the applicant under 6 AAC 50.475(d)(3)(B), and described in the final consistency determination issued under (a) of this section is a legally binding description of the project. A state resource agency may enforce the adopted alternative measure, the project modification, and the project description according to the agency's priorities, available resources, and preferred methods.

(c) When, following an elevation, the state continues to object to the applicant's consistency certification, DGC shall notify the applicant, the federal agency and the Director of OCRM of the objection in the final consistency response. The final response shall include

(1) a statement explaining how the proposed activity is inconsistent with specific enforceable policies; and

(2) a statement informing the applicant of a right to request appeal to the Secretary of Commerce in accordance with 15 C.F.R. 930.120-.132, as amended, that shall state "Pursuant to 15 C.F.R. 930.120-.132, and within 30 days from receipt of this letter, you may request that the Secretary of Commerce override this objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the Coastal Zone Management Act, or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the DGC and the federal permitting or licensing agency. The Secretary may collect fees from you for administering and processing your request." (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 46.40.020	AS 46.40.096
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AS 44.19.160
AS 44.19.161

AS 46.40.040

AS 46.40.100

Editor's Note: An applicant for a federal permit or license and the federal permit or licensing agency should refer to 15 C.F.R. 930.50-.66, as amended, for applicant and federal agency responsibilities under federal regulation.

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.490. RESOURCE AGENCY AUTHORIZATION. When an activity that requires a federal authorization also requires an authorization from a resource agency,

(1) DGC shall coordinate the start date for the consistency review with the resource agency authorization review process such that the federal timeline is met; and

(2) when an applicant appeals a consistency response to the Secretary of Commerce under 15 C.F.R. 930.120-.132, a resource agency shall not issue an authorization necessary for the project until the appeal is decided; a final consistency response may be amended to reflect the outcome of the appeal. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.160 AS 46.40.040 AS 46.40.100
AS 44.19.161 AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.495. REVIEW PROCESS FOR OCS EXPLORATION, DEVELOPMENT AND PRODUCTION ACTIVITIES. (a) In accordance with 15 C.F.R. 930.70-.85, as amended, federally regulated activities described in detail in an OCS plan for exploration, or development and production from OCS leased lands, and that affect any coastal use or resource, are required to be conducted in a manner consistent with the ACMP.

(b) The consistency review for an OCS exploration, or development and production activity shall be conducted in accordance with the requirements of 15 C.F.R. 930.70-.85, as amended, and 6 AAC 50.416-.490. When a federal requirement conflicts with an ACMP requirement, the federal requirement is controlling. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 44.19.160

Editor's Note: An OCS plan applicant and a federal license or permit agency should refer to 15 C.F.R. 930.70-.85, as amended, for applicant and federal agency responsibilities under federal regulation.

ARTICLE 5. PUBLIC PARTICIPATION

500. Public Notice

510. Public Comments

520. Public Hearings

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.500. PUBLIC NOTICE. (a) A consistency review of a project must be public noticed.

(b) To provide sufficient public notice of a consistency review, a notice must

(1) comply with the requirements of AS 46.40.096(c);

(2) solicit comments to be addressed and submitted to the coordinating agency regarding the project's consistency with the enforceable policies of the ACMP;

(3) specify the deadline for receipt of comments by the coordinating agency or a contact number for finding out the deadline;

(4) identify, to the extent known at the time the notice is issued, each public place at which copies of the consistency review packet and review schedule will be available for public inspection and copying, if the coordinating agency makes them available under 6 AAC 50.240(d)(4), 6 AAC 50.335(2)(D), or 6 AAC 50.435(2)(D);

(5) be

(A) published in a newspaper of general circulation within a district that the coordinating agency considers to be an affected coastal resource district or within an area that the agency considers the project will likely affect; or

(B) posted

(i) on an internet website dedicated to consistency review public notices; and

(ii) posted in at least one public place within a district that the coordinating agency considers to be an affected coastal resource district or within an area that the agency considers the project will likely affect; and

(6) be provided by mail or electronically to each person who has requested from the coordinating agency public notice of

(A) the project; or

(B) any project affecting a specific coastal district.

(c) The coordinating agency shall consult with coastal districts to determine how to effectively public notice projects within that coastal district based upon differences in project type, anticipated effect of the project on coastal uses and resources, common use of or reliance on various media by district residents, other state or federal notice requirements, and time and fiscal restraints.

(d) A coordinating agency may issue a joint public notice of a consistency review with other state or federal agencies if that notice complies with the minimum requirements identified in this section. To the extent feasible, the state or federal agency and the coordinating agency will ensure that the joint public notice includes

(1) a reference to the agency's authorization; and

(2) a solicitation of comments on the agency's authorization.

(e) If a public notice of a consistency review is issued that would not comply with the minimum requirements of this section, the coordinating agency shall issue a supplemental notice that does comply. (Eff. ____/____/200__, Register ____)

Authority: AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.510. PUBLIC COMMENTS. (a) A person may comment on the consistency of a project by submitting written comments addressed directly to the coordinating agency on or before the comment deadline established under 6 AAC 50.250 or by presenting oral or written comment to the coordinating agency at a public hearing that the coordinating agency schedules and holds under 6 AAC 50.520.

(b) When a person contends that a project is inconsistent with an enforceable policy of the ACMP, the oral or written comment must identify the enforceable policy and explain how the project is inconsistent with the policy.

(c) To be considered, comments must comply with subsections (a) and (b) of this section.

(d) The coordinating agency shall send or ensure that the applicant, each resource agency and any potentially affected coastal resource district receive a copy of timely submitted comments

and, if the coordinating agency holds a public hearing under 6 AAC 50.520, the summary of the comments prepared under 6 AAC 50.520(d). Upon request, the coordinating agency shall send a copy of the comments to other persons interested in the project.

(e) For a timely submitted comment, the coordinating agency may consult with the resource agency or coastal resource district with expertise or responsibility to consider the comment. (Eff. ____/____/200__, Register ____)

Authority: AS 46.40.040 AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.520. PUBLIC HEARINGS. (a) The coordinating agency shall schedule and hold a public hearing in an area that the coordinating agency considers a project will likely affect if the coordinating agency

(1) receives a written request for a public hearing regarding the project no later than

(A) Day 17 in a 30-day review; or

(B) Day 30 in a 50-day review; and

(2) finds that the request is based on facts or information relevant to the project's consistency with an enforceable policy that would not otherwise be available in the consistency review.

(b) Within seven days after receiving a request under (a) of this section, the coordinating agency shall

(1) decide whether to hold a public hearing; and

(2) notify the requestor if the coordinating agency will accept the request under (a) of this section.

(c) At least 15 days but no more than 30 days before the date of a public hearing scheduled under (a) of this section, the coordinating agency shall give notice of the time and place of the hearing

(1) by publication in a newspaper of general circulation in the area the project is likely to affect;

(2) by written notice to the governing body of an affected coastal resource district and any authorizing resource agencies; and

(3) if the project is to be located in the unorganized borough, by radio or television broadcast to the area the project is likely to affect.

(d) If a comment at a public hearing held under this section presents a new issue or information that the review participants have not already considered, the coordinating agency shall summarize any relevant ACMP comment and distribute the summary to each review participant and the applicant within five days after the hearing. A review participant or the applicant may submit a written response to the summary provided the coordinating agency receives the response within seven days after distribution of the summary.

(e) If a resource agency or an affected coastal resource district holds a public hearing as part of its permit process under its authority or to develop its consistency review comments, the coordinating agency may consider a comment received at the hearing as part of the consistency review if

(1) the comment meets the requirements of 6 AAC 50.510(a)-(c);

(2) the coordinating agency holds the hearing jointly with the resource agency; and

(3) the coordinating agency receives the comment from the resource agency or the affected coastal resource district by the comment deadline established under 6 AAC 50.250.

(f) DGC may, at the request of a resource agency coordinating a public hearing under this section, assist the resource agency in implementing the public hearing requirements under this section. (Eff. ____/____/200__, Register ____)

Authority: AS 46.40.040 AS 46.40.096

ARTICLE 6. ELEVATION AND PETITION

600. Elevation Process

610. Petition on Program Implementation; Process on the Petition

620. General Hearing Procedures on Petitions

630. Citizen of an Affected Coastal Resource District

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.600. ELEVATION PROCESS. (a) When a resource agency, project applicant, or affected coastal resource district does not concur with the proposed consistency determination or response, it may request an elevation of the proposed consistency determination or response to the resource agency directors.

(b) At the request of a resource agency, project applicant, or affected coastal resource district, the coordinating agency may proceed directly to a commissioner-level elevation under subsections (j) – (l) of this section.

(c) An elevation is limited to consideration of

(1) the proposed consistency determination or response regarding whether the project is consistent with the enforceable policies of the ACMP; or

(2) any alternative measure or other project modification that would achieve consistency with the enforceable policies of the ACMP.

(d) A request for elevation

(1) must be in writing;

(2) must be received by the coordinating agency within five days after the requestor receives the proposed consistency determination or response; and

(3) must explain the requestor's concern, including any addition of or modification to an alternative measure identified that would achieve consistency with the enforceable policies of the ACMP.

(e) Upon receipt of a request for elevation in accordance with (a), (c) and (d) of this section, the coordinating agency shall

(1) distribute the request for elevation to each review participant, the applicant, and each person who submitted timely comments;

(2) suspend the review schedule by fifteen days; and

(3) arrange and facilitate a meeting among the requestor and at least one director or their delegate from each resource agency.

(f) The coordinating agency shall invite the resource agencies, the applicant and any affected coastal resource district to participate in, and may invite any other affected party to attend, the meeting arranged under (e) of this section.

(g) Only resource agency directors or their delegates may make a final decision on the elevation.

(h) Within the fifteen days identified in (e)(2) of this section, the coordinating agency shall

(1) attempt to resolve the disputed issue given the policy direction provided by the participating directors or their delegates of the resource agencies;

(2) prepare a director-level proposed consistency determination or response that reflects the participating directors or their delegates of the resource agencies' decision; and

(3) distribute the determination or response to each review participant, the applicant, and each person who submitted timely comments.

(i) When a resource agency, project applicant, or affected coastal resource district does not concur with the director-level proposed consistency determination or response distributed under (h)(3) of this section, it may request an elevation of the director-level proposed consistency determination or response by the resource agency commissioners.

(j) An elevation to the resource agency commissioners received under (b) or (i) of this section shall follow the same format and requirements as (c) through (h) of this section.

(k) Only resource agency commissioners or their delegates may make a final decision.

(l) Following resolution of the disputed issue, the coordinating agency shall, within fifteen days of receipt of the request for elevation under (b) or (i) of this section,

(1) prepare a final consistency determination or response that reflects the participating resource agency commissioners' or their delegates decision and that is consistent with any policy direction given by the commissioners of the resource agencies or the governor; and

(2) distribute the final determination or response to each review participant, the applicant, and each person who submitted timely comments.

(m) In this section, "consistent" means consistent to the maximum extent practicable for a federal activity subject consistency review. (Eff. ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 46.40.020	AS 46.40.096
	AS 44.19.160	AS 46.40.040	AS 46.40.100
	AS 44.19.161		

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.610. PETITION ON PROGRAM IMPLEMENTATION; PROCESS ON THE PETITION. (a) A coastal resource district, a citizen of the coastal resource district, or a state resource agency may file a petition to the council showing that a district coastal management program is not being implemented. A petitioner may not challenge a proposed or final consistency determination or response rendered under AS 46.40.096 and this chapter.

(b) A petition must be submitted in writing to DGC. The petition must

(1) include the petitioner's name, mailing address, the street address, and a telephone number, and any facsimile number, at which the petitioner may be reached;

(2) specify whether the petitioner is a coastal resource district, a citizen of the coastal resource district, or a state resource agency;

(3) include an item listed in 6 AAC 50.630(b) when the petitioner asserts he or she is a citizen of the coastal resource district;

(4) include a list of points that the person intends to argue in the petition;

(5) explain how the approved program of the coastal resource district is not being implemented; and

(6) suggest an alternative action that will implement the approved program of the coastal resource district.

(c) DGC shall prepare and submit to the council, and any affected coastal resource district, draft written findings and a draft written decision. The council will, in its discretion, adopt as its findings and decision the draft findings and decision from DGC. The Council may order that the

coastal resource district or state resource agency take any action with respect to future implementation of the district's coastal management program.

(d) Within five days after the decision by the council, DGC shall distribute the decision to the petitioner, any affected coastal resource district, and each state agency and person whom DGC identifies as having an interest in the petition.

(e) The effective date of a council decision is the date DGC distributes the decision. As of the date of distribution, the council decision is a final administrative decision under the ACMP. (Eff. ____/____/200__, Register ____)

Authority: AS 46.40.096 AS 46.40.100

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.620. GENERAL HEARING PROCEDURES ON PETITIONS. (a) For a petition filed under 6 AAC 50.610, the council will conduct a petition hearing. A petition hearing may be conducted by teleconference.

(b) The council will, in its discretion, conduct a petition hearing by establishing a quorum of council members to conduct the hearing and make a decision. If a quorum cannot be established before the hearing date, the council will, in its discretion, assign at least one council member to preside over the hearing and establish a quorum of council members at a later date to make a decision. Before making a decision at a later date, participating council members who did not attend the hearing must review the tape or transcript of the hearing and the documentary evidence presented at the hearing, for a petition on program implementation.

(c) The council will convene a hearing to consider a petition on program implementation during the next scheduled council meeting or within 60 days, unless all parties to the hearing agree to a reasonable time extension. In a hearing held on a petition on program implementation

(1) the burden of proof is on the petitioner;

(2) the council will allow admission of material evidence of the type on which a reasonable person might rely in the conduct of serious business affairs; and

(3) formal rules of evidence need not apply. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 46.40.040 AS 46.40.100
AS 44.19.161 AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.630. CITIZEN OF AN AFFECTED COASTAL RESOURCE DISTRICT. (a) For purposes of AS 46.40 and this chapter, a citizen of an affected coastal resource district is a natural person who has been residing in the affected coastal resource district for a minimum of 30 days with the intent to remain in the district indefinitely.

(b) A petitioner under 6 AAC 50.610(a) shall submit with the petition filed under 6 AAC 50.610(b), at least one of the following items to demonstrate that the petitioner meets the criteria under (a) of this section:

(1) a copy of the petitioner's voter registration;

(2) a copy of the petitioner's driver's license;

(3) a copy of the petitioner's motor vehicle registration;

(4) a statement identifying where the petitioner maintains the petitioner's principal place of abode.

(c) The coordinating agency or the council may request additional information it considers necessary to aid the agency or council's determination regarding whether a petitioner meets the criteria under (a) of this section. (Eff. ___/___/200__, Register ___)

Authority: AS 46.40.040 AS 46.40.096 AS 46.40.100

**ARTICLE 7. GENERAL AND NATIONWIDE PERMITS, CATEGORICALLY
CONSISTENT DETERMINATIONS, GENERAL CONSISTENCY DETERMINATIONS,
AND GENERAL CONSISTENCY CONCURRENCES**

- 700. Use of General and Nationwide Permits, Categorically Consistent Determinations, General Consistency Determinations, and General Concurrences in Project Consistency Reviews**
- 710. Review Process for Categorically Consistent Determinations for Activities that Require a Resource Agency Authorization**
- 720. Implementation of Categorically Consistent Determinations for Activities that Require a Resource Agency Authorization**
- 730. Review Process for General Consistency Determinations for Activities that Require a Resource Agency Authorization**
- 740. Implementation of General Consistency Determinations for Activities that Require a Resource Agency Authorization**
- 750. Activities Generally Subject to Individual Consistency Review**
- 760. Review Process for State Resource Agency General Permits**
- 770. Review Process for a Federal General Permit and Nationwide Permit**
- 780. General Consistency Determinations for Federal Activities**
- 790. General Concurrences for Federally Regulated Activities**

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.700. USE OF GENERAL AND NATIONWIDE PERMITS, CATEGORICALLY CONSISTENT DETERMINATIONS, GENERAL CONSISTENCY DETERMINATIONS, AND GENERAL CONCURRENCES IN PROJECT CONSISTENCY REVIEWS.

(a) When an activity that is part of a project is authorized by a general or nationwide permit that was previously evaluated and found consistent with the enforceable policies of the ACMP, the scope of the project subject to review may exclude the activity authorized by the general or nationwide permit in accordance with AS 46.40.096(h).

(b) When all activities of a project are subject to a categorical or general consistency determination or general concurrence under this article, the project is not subject to further consistency review.

(c) When an activity that is part of a project is subject to a categorical or general consistency determination or general concurrence under this article and the project includes an activity that requires an individual consistency review, all activities shall be included in the scope of a project subject to review except as permitted under (d) of this section.

(d) When a project includes an activity that is subject to a categorical or general consistency determination or general concurrence under this article, the coordinating agency, with the concurrence of the resource agencies and affected coastal resource district, may exclude the activity from the scope of the project subject to a consistency review when the impact of the activity, when in compliance with the categorical or general consistency determination or general concurrence, has a temporary and de minimis impact to coastal uses and resources. An activity excluded from a consistency review may be authorized at the discretion of an authorizing resource agency subject to the standard alternative measures in the general consistency determination or general concurrence.

(e) DGC shall develop and maintain a list of general and nationwide permits, categorically consistent determinations, general consistency determinations, and general concurrences. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.161 AS 46.40.040 AS 46.40.096
AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.710. REVIEW PROCESS FOR CATEGORICALLY CONSISTENT DETERMINATIONS FOR ACTIVITIES THAT REQUIRE A RESOURCE AGENCY AUTHORIZATION.

(a) DGC may issue a categorically consistent determination for an activity that requires a resource agency authorization and that has de minimis impact on coastal uses and resources.

(b) DGC shall develop and maintain a list of categorically consistent determinations (the "A" list).

(c) A categorically consistent determination shall

- (1) identify the authorization required for the activity; and
- (2) specifically describe the activity subject to the determination.

(d) DGC will amend the A list on its own initiative or at the request of a resource agency or coastal resource district, based on new information regarding the impacts of a listed activity, including cumulative impacts of the activity on coastal uses or resources.

(e) When a new categorically consistent determination, amendment to an existing determination, or amendment of the A list is proposed, DGC shall

(1) distribute the proposed categorically consistent determination or amended list to review participants;

(2) public notice the proposed categorically consistent determination or amended list in accordance with 6 AAC 50.500; and

(3) review the A list amendment under sections 6 AAC 50.235-270.

(f) DGC shall include an activity on the A list when the activity is found consistent under (e)(3) of this section and the activity has de minimis impact on coastal uses and resources. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.161 AS 46.40.040 AS 46.40.096
AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.720. IMPLEMENTATION OF CATEGORICALLY CONSISTENT DETERMINATIONS FOR ACTIVITIES THAT REQUIRE A RESOURCE AGENCY AUTHORIZATION.

(a) An applicant for an activity on the A list shall submit a completed CPQ to the authorizing agency unless the categorically consistent determination specifically states a CPQ is not needed.

(b) The authorizing resource agency shall review the authorization application and CPQ.

(c) An activity that meets the description in the categorically consistent determination is not subject to further consistency review, unless the CPQ indicates an authorization is needed for an activity that is part of the project, and the additional activity is not on the A or B list. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.161 AS 46.40.040 AS 46.40.096
AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.730. REVIEW PROCESS FOR GENERAL CONSISTENCY DETERMINATIONS FOR ACTIVITIES THAT REQUIRE A RESOURCE AGENCY AUTHORIZATION. (a) DGC may issue a general consistency determination for an activity that requires a resource agency authorization and that can be made consistent with the ACMP through application of standard alternative measures.

(b) DGC shall develop and maintain a list of general consistency determinations (the "B" list).

(c) A general consistency determination must

(1) identify the authorization required for the activity;

(2) specifically describe the activity subject to the determination; and

(3) describe standard alternative measures that would achieve consistency with the enforceable policies of the ACMP.

(d) DGC will amend the B list on its own initiative or at the request of a resource agency or coastal resource district, based on new information regarding the impacts of a listed activity, including cumulative impacts of the activity on coastal uses or resources.

(e) When a new general consistency determination, amendment to an existing determination, or amendment of the B list is proposed, DGC shall

(1) distribute the proposed general consistency determination or amended list to review participants;

(2) public notice the proposed general consistency determination or amended list in accordance with 6 AAC 50.500; and

(3) review the B list amendment under sections 6 AAC 50.235-270.

(f) DGC shall include an activity on the B list

(1) when the activity is found consistent under (e)(3) of this section; and

(2) based on development of standard alternative measures that would achieve consistency with the enforceable policies of the ACMP. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.161

AS 46.40.040

AS 46.40.096

AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.740. IMPLEMENTATION OF GENERAL CONSISTENCY DETERMINATIONS FOR ACTIVITIES THAT REQUIRE A RESOURCE AGENCY AUTHORIZATION. (a) An applicant for an activity on the B list shall submit a completed CPQ to the authorizing resource agency unless a general consistency determination specifically states a CPQ is not needed.

(b) The authorizing resource agency shall review the authorizing application and CPQ.

(c) An activity that meets the description in the general consistency determination is not subject to further consistency review, unless the CPQ indicates an authorization is needed for an activity that is part of the project, and the additional activity is not on the A or B list.

(d) An authorization for an activity that is consistent based on a general consistency determination shall only be issued once the applicant adopts the alternative measures identified in the general consistency determination that would achieve consistency with the enforceable policies of the ACMP. The applicant shall submit to the coordinating agency, in writing, a statement adopting the alternative measures as part of the project description. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.161

AS 46.40.040

AS 46.40.096

AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.750. ACTIVITIES GENERALLY SUBJECT TO INDIVIDUAL CONSISTENCY REVIEW. (a) DGC, in consultation with the resource agencies and affected coastal resource districts, shall develop and maintain a list of authorizations that authorize activities that may have a reasonably foreseeable direct or indirect effect on a coastal use or resource (the "C" list).

(b) An activity that requires an authorization that is on the C list and that meets the requirements of 6 AAC 50.005(a)(2) shall be subject to an individual consistency review in accordance with the procedures in this chapter, except as provided for in 6 AAC 50.700.

(c) An activity requiring a resource agency authorization that is not identified on the C list shall not be subject to an individual consistency review. (Eff. ____/____/200__, Register ____)

Authority: AS 46.40.040 AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.760. REVIEW PROCESS FOR RESOURCE AGENCY GENERAL PERMITS. (a) A resource agency that develops a general permit under its statutory or regulatory authority shall subject the general permit to a consistency review in accordance with the procedures identified in (b) of this section if the activities covered under the general permit may have a reasonably foreseeable direct or indirect effect on a coastal use or resource.

(b) When a new resource agency general permit or amendment to an existing resource agency general permit is proposed, the resource agency shall

- (1) distribute the proposed general permit to the review participants and DGC;
- (2) public notice the proposed general permit in accordance with 6 AAC 50.500; and
- (3) review the proposed general permit under 6 AAC 50.235-270.

(c) The resource agency shall provide DGC with a copy of the final approved general permit. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.161 AS 46.40.040 AS 46.40.096
AS 46.40.020

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.770. REVIEW PROCESS FOR A FEDERAL GENERAL PERMIT AND NATIONWIDE PERMIT. A federal general permit or nationwide permit shall be reviewed for consistency in accordance with 6 AAC 50.305-.395. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 46.40.040 AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.780. GENERAL CONSISTENCY DETERMINATIONS FOR FEDERAL ACTIVITIES. (a) In accordance with 15 C.F.R. 930.36(c), a federal agency may provide DGC with a general consistency determination for

(1) repetitive activities that do not affect any coastal use or resource when performed separately; and

(2) de minimis activities as described under 15 C.F.R. 930.33(a)(3).

(b) A general consistency determination for a repetitive or de minimis federal activity shall be submitted and reviewed in the same manner as a federal activity under 6 AAC 50.305-.395.

(c) When the state concurs with a general consistency determination for a repetitive or de minimis activity, the activity shall not be subject to further consistency review.

(d) DGC shall develop and maintain a list of general consistency determinations for repetitive and de minimis federal activities. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 46.40.040 AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.790. GENERAL CONCURRENCES FOR ACTIVITIES REQUIRING A FEDERAL AUTHORIZATION. (a) In accordance with 15 C.F.R. 930.53(b), DGC may issue a general concurrence for minor activities requiring a federal authorization.

(b) An activity that is consistent based on a general concurrence for a minor activity requiring a federal license or permit shall not be subject to further consistency review.

(c) DGC shall develop and maintain a list of general concurrences for activities requiring a federal authorization. This list shall include the minor federal authorization activities and the relevant alternative measures which are covered by the general concurrence. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145 AS 46.40.040 AS 46.40.096

ARTICLE 8. PROJECT MODIFICATIONS AND RENEWALS OF AUTHORIZATIONS

800. Project Modifications During a Consistency Review

810. Project Modifications After Issuance of a Final Consistency Determination

820. Authorization Renewals

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.800. PROJECT MODIFICATIONS DURING A CONSISTENCY REVIEW. A coordinating agency may terminate a consistency review if, after initiation of the consistency review,

(1) information is received by the coordinating agency that indicates an additional authorization subject to the consistency review is required; or

(2) the description of the project is substantially modified by the applicant. (Eff. ____/____/200__, Register ____)

Authority: AS 46.40.040 AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.810. PROJECT MODIFICATIONS AFTER ISSUANCE OF A FINAL CONSISTENCY DETERMINATION. (a) An applicant that proposes a modification to an activity that is part of a project for which a final consistency determination or response has been issued shall submit a new CPQ that includes a detailed description of the proposed modification. The CPQ for the proposed modification must be submitted to the agency that coordinated the consistency review of the project.

(b) A modification that is proposed to a project for which a final consistency determination or response has been issued shall be subject to a consistency review when the proposed modification may cause additional impacts to a coastal use or resource and

(1) a new resource agency authorization subject to the consistency review process or a new federal authorization under 6 AAC 50.405 is required; or

(2) a change to an existing resource agency or federal authorization is required.

(c) Only the part of the project affected by a proposed modification is subject to a consistency review. Alternative measures developed during the consistency review of a proposed modification must address only the impacts caused by the modification.

(d) Except as provided in (e) of this section, the resource agency that is issuing a new authorization, or whose authorization requires modification, will conduct the consistency review for the proposed project.

(e) DGC shall coordinate the consistency review for a proposed modification

(1) when the modification requires a new or amended federal authorization;

(2) when a modification requires a new authorization from two or more resource agencies;

(3) when a change to an existing authorization from two or more resource agencies is required;

(4) when more than one modification is proposed at the same time and the combined proposed modifications require authorization action from two or more resource agencies;

(5) the resource agency whose authorization requires modification requests that DGC coordinate the review, provided DGC agrees; or

(6) except when DGC and an resource agency whose authorization requires modification agree that that agency will coordinate the review.

(f) The coordinating agency shall distribute the CPQ for the proposed modification to the review participants. Each review participant shall respond to the coordinating agency within 7 days after the CPQ is distributed and determine whether

(1) a new authorization or change to an existing authorization is required; and

(2) the proposed modification may cause additional impacts to a coastal use or resource.

(g) If, in accordance with (f) of this section, the coordinating agency determines that the proposed modification will not cause additional impacts to coastal uses and resources, no further action is necessary under this chapter. The appropriate resource agency or federal agency will process the proposed modification as required under the agency's statutory and regulatory authority.

(h) If, in accordance with (f) of this section, the coordinating agency determines that the proposed modification may cause an additional impacts to a coastal use or resource, the coordinating agency shall initiate a consistency review for the proposed modification under the appropriate consistency review process described under 6 AAC 50.005.

(i) The following modifications, that have no additional effect on coastal uses and resources, are not subject to further consistency review:

(1) change in ownership;

(2) change in contractor or subcontractor;

(3) decrease in the scope of the project with no change of purpose;

(4) authorization modifications that are within the scope of the original project that was reviewed;

(5) authorization modifications that are allowed under the original authorization conditions;

(6) authorization modifications that are meant to clarify requirements in the previously issued authorization.

(j) A modification to a federal activity shall be addressed under 15 C.F.R. 930.45 and .46. (Eff. ___/___/200__, Register ___)

Authority: AS 44.19.145

AS 44.19.161

AS 46.40.040

AS 44.19.160

AS 46.40.020

AS 46.40.096

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.820. AUTHORIZATION RENEWALS, RE-ISSUANCES, AND EXPIRATIONS. (a) When an authorization for an existing project is subject to renewal, re-issuance, or the authorization has expired and the applicant does not propose a modification to the project, no further action under this chapter is necessary.

(b) When an authorization for an existing project is subject to renewal, re-issuance, or the authorization has expired and the applicant proposes a modification to the existing project, the proposed modification shall be subject to the provisions of 6 AAC 50.810. (Eff. ____/____/200__, Register ____)

Authority: AS 46.40.040

AS 46.40.096

ARTICLE 9. GENERAL PROVISIONS

920. Emergency Expedited Review and Waiver of Review.

925. Repealed

950. Computation of Time

990. Definitions.

6 AAC 50 is amended by adding a new section to read:

6 AAC 50.920. EMERGENCY EXPEDITED REVIEW AND WAIVER OF REVIEW.

(a) When an applicant needs an expedited consistency review or waiver of consistency review due to an emergency as described in AS 26.23 or AS 46.04.080, other applicable law, or when the coordinating agency finds that an expedited or waiver of review is necessary for the preservation of the public peace, health, safety, or general welfare, the coordinating agency, in consultation with the resource agencies and any affected coastal resource district, may expedite or waive the review process established in this chapter as necessary to meet the emergency. The decision to expedite or waive the review shall be based upon clear and convincing evidence of a need to expedite or waive the review.

(b) When an expedited review is determined necessary in accordance with (a) of this section, the coordinating agency shall document the decision in writing. The coordinating agency shall expedite the consistency review process as necessary to meet the emergency and, as soon as practicable, shall issue a final consistency determination in accordance with 6 AAC 50.265, that describes the expedited review process.

(c) When a waiver of review is necessary in accordance with (a) of this section, the coordinating agency shall document the decision in writing as soon as practicable. The document will serve as the final consistency determination and shall be distributed to the review participants.

(d) If the Department of Environmental Conservation determines that an oil spill or hazardous substance release poses an imminent threat to public health, safety, or the environment, the coordinating agency shall waive the consistency review for the immediate containment and cleanup of the oil or hazardous substance release under AS 46.04.020 or AS 46.09.020 in order to reduce or remove the threat to public health, safety, or the environment.

(e) An expedited consistency review or waiver of review is not subject to

(1) the public notice requirements under 6 AAC 50.500; and

(2) elevation under 6 AAC 50.600. (Eff. ____/____/200__, Register ____)

Authority: AS 44.19.145

6 AAC 50.925 is repealed:

6 AAC 50.925. STATE RESPONSE TO A FEDERAL CONSISTENCY DETERMINATION OR CERTIFICATION. Repealed. (Eff. 7/1/99, Register 150; repealed ____/____/200__, Register ____)

6 AAC 50.950 is amended to read:

6 AAC 50.950. COMPUTATION OF TIME. (a) A time period under this chapter must be calculated using calendar days. An action required to be taken on a Saturday, Sunday, or state or federal holiday must be taken by the close of business on or before the next working day.

(b) An action required to be taken by a deadline must be completed by the close of business on the workday identified as the deadline. (Eff. 7/1/99, Register 150; am ____/____/200__, Register ____)

Authority: AS 46.40.040 AS 46.40.096 AS 46.40.100

Editor's note: As of Register 150, July 1, 1999, the substance of 6 AAC 50.950 was previously contained in former 6 AAC 50.110(c).

6 AAC 50 is amended to read:

6 AAC 50.990. DEFINITIONS. (a) In this chapter, unless the context indicates otherwise
(1) "ACMP" means the Alaska Coastal Management Program [, AS SET OUT IN AS 46.40, THIS CHAPTER, 6 AAC 80, 6 AAC 85, AND THE ENFORCEABLE POLICIES OF APPROVED PROGRAMS OF DISTRICTS];

(2) "affected coastal resource district" has the meaning given in AS 46.40.096(g)(1);

(3) "alternative measure" means a modification to the project that, if adopted by the applicant, would achieve consistency with the enforceable policies of the ACMP;

(4) [3] "applicant" means any natural person, corporation, company, partnership, firm, association, organization, business trust or society that submits an application for a resource agency or federal authorization or who submits an OCS plan for exploration, development and production [A PROJECT APPLICANT UNDER ACMP]; a federal agency applying for a permit or license from another state or federal agency is subject to the provisions of 6 AAC 50.305 - .395, and is not considered an applicant elsewhere;

(5) [4] "approved program" means a coastal resource district coastal management program [THAT HAS BEEN] approved by the council under AS 46.40 and filed by the lieutenant governor's office as provided under 6 AAC 85.180;

(6) "authorization" means

(A) any permit, license, authorization, certification, approval or other form of permission that a resource agency is empowered to issue to an applicant, except for a notice of intent required to obtain a general permit reviewed and approved under this chapter; and

(B) a federal permit or license and has the meaning given in 15 C.F.R. 930, as amended;

(7) "biological or physical resources" means resources in the coastal zone including plants, trees, minerals, fish, shellfish, invertebrates, amphibians, birds, mammals, reptiles, submerged aquatic vegetation, lands, gravel, sand, fresh waters, air, tidal and non-tidal wetlands, ocean waters, estuaries, rivers, streams, lakes, barrier islands, lagoons, exposed high energy coasts, and upland habitat;

(8) "close of business" means 5:00 p.m.;

(9) "coastal use or resource" means any land or water use or natural resource of the coastal zone including subsistence, recreation, public access, fishing, historic or archaeological resources, geophysical resources, and biological or physical resources found in the coastal zone on a regular or cyclical basis;

(10) "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder) within the boundaries established under 6 AAC 85.040, except for those lands excluded under 16 U.S.C. 1453(1);

(11) "consistency certification" means a declaration that is supported by the necessary data and information by an applicant that a proposed project complies with the enforceable policies of the ACMP and that the project will be conducted in a manner consistent with the program;

(12) [(5) "CONCLUSIVE CONSISTENCY DETERMINATION" MEANS A FINAL CONSISTENCY DETERMINATION AS DESCRIBED IN AS 46.40.096 AND 6 AAC 50.120;

(6)] "consistency determination" means [(A)] a document issued by a coordinating agency that indicates whether a proposed project is consistent or inconsistent with the ACMP [THAT (I) CONTAINS A BRIEF DESCRIPTION OF THE PROJECT UNDER REVIEW AND THE SCOPE OF THE PROJECT; (II) STATES WHETHER THE PROJECT IS CONSISTENT, CONSISTENT WITH STIPULATIONS, OR NOT CONSISTENT, AND PROVIDES A BRIEF STATEMENT OF THE REASONS FOR THAT DETERMINATION; (III) IDENTIFIES EACH CONDITION OR STIPULATION NECESSARY FOR THE PROJECT TO BE CONSISTENT AND THE STATE PERMIT TO WHICH THE CONDITION OR STIPULATION WILL BE ATTACHED; AND (IV) IDENTIFIES THE DEADLINE FOR SUBMITTING A REQUEST FOR ELEVATION UNDER 6 AAC 50.075(A) OR 6 AAC 50.075(D)(3), FOR SUBMITTING A NOTICE OF PETITION ON A PROPOSED CONSISTENCY DETERMINATION, IF APPROPRIATE, AND FOR FILING A PETITION ON A PROPOSED CONSISTENCY DETERMINATION, IF APPROPRIATE; OR (B) THE STATE'S RESPONSE TO A FEDERAL CONSISTENCY DETERMINATION OR CERTIFICATION SUBMITTED TO THE STATE UNDER 16 U.S.C. 1456(C) (COASTAL ZONE MANAGEMENT ACT) AND FEDERAL REGULATIONS ADOPTED UNDER THE AUTHORITY OF THIS STATUTE];

(13) "consistency response" means

(A) the state's response to a federal consistency determination or applicant certification submitted to the state under 6 AAC 50.405-.495 and is a federal consistency determination or certification as identified in AS 44.19.145(a)(11); and

(B) a consistency determination under AS 46.40.096;

(14) [(7)] "consistency review" has the meaning given in AS 46.40.210;

[(8) "CONSISTENT" MEANS IN COMPLIANCE WITH THE STANDARDS ADOPTED BY THE COUNCIL AT 6 AAC 80.040 – 6 AAC 80.150 AND WITH THE ENFORCEABLE POLICIES OF AN APPROVED PROGRAM FOR AN AFFECTED COASTAL RESOURCE DISTRICT; (9)]

(15) "coordinating agency"

(A) means the agency responsible for coordinating a consistency review and rendering a proposed or final [CONCLUSIVE] consistency determination as set out under AS 44.19.145 (a)(11) and AS 46.40.096; and

(B) has the same meaning as

(i) "reviewing entity," as used in AS 46.40.096; and

- (ii) "office" or "state agency responsible for coordinating the consistency review," as used in AS 46.40.100(b);
- (16) [(10)] "council" means the Alaska Coastal Policy Council;
- (17) cumulative impacts" means reasonably foreseeable effects on a coastal use or resource which result from the incremental impact of an individual project when viewed together with the impacts of past and currently authorized projects;
- (18) "CZMA" means the federal Coastal Zone Management Act of 1972, as amended;
- (19) [(11)] "DGC" means the division of governmental coordination within the office of management and budget in the Office of the Governor;
- (20) "de minimis" has the meaning given in 15 C.F.R. 930.33(a)(3)(ii);
- (21) "director-level proposed consistency determination" means a proposed consistency determination that reflects the participating directors or their delegates of the resource agencies' decision regarding the elevation;
- (22) [(12)] "DNR" means the Department of Natural Resources;
- (23) [(13)] "disposal of interest in state land" means the sale, lease, or other disposition of state-owned or state-managed land or resources by DNR;
- (24) [(14)] "district" has the meaning given "coastal resource district" in AS 46.40.210 ;
- (25) "due deference" means that deference that is appropriate in the context of the commentor's expertise and area of responsibility, and all the evidence available to support any factual assertions;
- (26) [(15)] "elevation" means a subsequent review under AS 46.40.096(d)(3) of a proposed consistency determination;
- (27) [(16)] "enforceable policy" means a standard under 6 AAC 80, as amended, and a policy in an approved coastal resource district coastal management [PROVISION IN AN APPROVED] program that is legally binding, as developed under 6 AAC 85.090;
- (28) "federal consistency determination" means a decision by a federal agency, supported with findings, that a proposed project will be conducted in a manner consistent to the maximum extent practicable with the enforceable policies of the ACMP;
- (29) "final consistency determination" has the same meaning as "conclusive state consistency determination" as used in AS 44.19.145(a)(11);
- (30) "general permit" means an authorization that covers a group of similar facilities or activities subject to standard requirements;
- (31) "OCRM" means the Office of Ocean and Coastal Resource Management within the National Oceanic and Atmospheric Administration of the Department of Commerce;
- (32) [(18)] "OMB" means the office of management and budget in the Office of the Governor; [(19) "PERMIT" MEANS A PERMIT, LEASE, AUTHORIZATION, LICENSE OR ANY OTHER DETERMINATION NECESSARY FOR COMPLETION OF A PROJECT OR A DISCRETE PHASE OF A PROJECT; (20)]
- (33) "petition on program implementation" means a petition filed under AS 46.40.100 (b)(2);
- (34) [(22)] "project" means all activities that will be part of a proposed coastal development; [AN ACTIVITY OR USE THAT WILL BE LOCATED IN OR MAY AFFECT THE COASTAL ZONE OF THIS STATE AND THAT IS SUBJECT TO CONSISTENCY REVIEW UNDER 16 U.S.C. 1456(C), OR THAT REQUIRES THE ISSUANCE OF AT LEAST ONE STATE PERMIT; "PROJECT" INCLUDES EACH PHASE OF A PROJECT WHEN A LAND OR WATER ACTIVITY IS DEVELOPED OR AUTHORIZED IN

DISCRETE PHASES, AND EACH PHASE REQUIRES A STATE AGENCY DECISION REGARDING PERMITS; (23)]

(35) "render" has the meaning given in AS 44.19.152;

(36) [(24)] "resource agency" means the Alaska Departments [DEPARTMENT] of Environmental Conservation, [THE DEPARTMENT OF] Fish and Game, or [THE DEPARTMENT OF] Natural Resources;

(37) [(25)] "review participant" means

(A) a resource agency, a state agency that has requested participation, and an affected coastal resource district; and

(B) if a project includes an oil discharge prevention and contingency plan, "review participant" includes an affected regional citizens advisory council as defined in 33 U.S.C. 2732(d).

(b) For purposes of AS 46.40.096 (g)(1) and this chapter, "direct and significant impact" means an impact that proximately contributes to a material [EFFECT OF A PROJECT THAT WILL LIKELY CONTRIBUTE OR LEAD TO A SIGNIFICANT] change in or alteration of [THE] natural, social, cultural, or economic characteristics of a coastal use or resource. (Eff. 3/11/84, Register 89; em am 5/1/90-8/9/90, Register 114; am 5/20/93, Register 126; am 7/1/99, Register 150; am ____/____/200__, Register ____)

Authority:	AS 44.19.145	AS 46.40.010	AS 46.40.096
	AS 44.19.161	AS 46.40.040	AS 46.40.100